

Morris L. Elmore

(Name)

P.O. Box 799004 / #18/117L

(Address)

SAN Diego, CA. 92179

(City, State, Zip)

F03648

(CDC Inmate No.)

2054	1983	<input checked="" type="checkbox"/>
FILING FEE PAID		
Yes	No	<input checked="" type="checkbox"/>
IFP MOTION FILED		
Yes	No	<input checked="" type="checkbox"/>
COMPLAINT TO		
Court	ProSe	<input checked="" type="checkbox"/>

FILED
AUG 11 2008
CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY <u>[Signature]</u> DEPUTY

United States District Court

Southern District of California

Morris Larnard Elmore

(Enter full name of plaintiff in this action.)

Plaintiff,

V.

SAN Diego Police DepartmentG. minter # 6052MASsey # 6310SALAS # 4442

(Enter full name of each defendant in this action.)

Defendant(s).

'08 CV 1464 L PCL

Civil Case No. _____

(To be supplied by Court Clerk)

Complaint under the
Civil Rights Act
42 U.S.C. § 1983

A. Jurisdiction

Jurisdiction is invoked pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. If you wish to assert jurisdiction under different or additional authority, list them below.

Plaintiff Asserts Jurisdiction Pursuant to 28 U.S.C. § 1343(a)(3).
And U.S.C. § 1983.

B. Parties

1. Plaintiff: This complaint alleges that the civil rights of Plaintiff, Morris Elmore
(print Plaintiff's name)

F03648, who presently resides at R.J.D.C.F./P.O. Box 799004
(mailing address or place of confinement)

1401 BROADway (Police HEADQuarters), were violated by the actions

of the below named individuals. The actions were directed against Plaintiff at _____

SAN Diego Police Department on (dates) 4-12-08, Same, and Same.
(institution/place where violation occurred) (Count 1) (Count 2) (Count 3)

2. Defendants: (Attach same information on additional pages if you are naming more than 4 defendants.)

Defendant G. Minter #6052 resides in SAN Diego, CA.
(name) (County of residence)
 and is employed as a Police Officer / SAN Diego. This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: Under Criminal mis-conduct, malice, racial -
ProFiling, Professional Negligence by lying under Oath
and in uniform AS a SAN Diego Police OFFICER.

Defendant OFFICER MASSEY #6310 resides in SAN Diego, CA.
(name) (County of residence)
 and is employed as a Police Officer / SAN Diego. This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: Under Criminal mis-Conduct, malice, racial -
ProFiling, Professional Negligence by lying in uniform AS
AS Police OFFICER.

Defendant SGT. Salas #4442 resides in SAN Diego, CA.
(name) (County of residence)
 and is employed as a Police Officer (Supervisor). This defendant is sued in
(defendant's position/title (if any))
 his/her ☒ individual ☐ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: Conspiracy to "commit" Criminal mis-conduct,
malice, racial ProFiling, Professional Negligence by lying in un-
iform, and Police Reports as a "Supervising OFFICER".

Defendant Minter, Massey and Salas resides in SAN Diego, CA.
(name) (County of residence)
 and is employed as a SAN Diego Police OFFICERS. This defendant is sued in
(defendant's position/title (if any))
 his/her ☐ individual ☒ official capacity. (Check one or both.) Explain how this defendant was acting
 under color of law: ALL three defendant and OFFICIAL Ca-
PACITY is being Sued "In making, and the Conspi-
racy OF a "False Arrest" while "Acting" under the
Color OF LAW: AS SAN Diego Police OFFICERS.

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: 8th Amendment, Freedom
(E.g., right to medical care, access to courts,
From Cruel and unusual Punishment.
due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,
etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

I, Morris Elmore, was detained in San Diego Central Jail from April 12, 2008, until May 9, 2008, under False (two) Charges which became a "False Arrest" because Officer G. Minter, #
badge 6052, lied on his police Report and in uniform with the help and conspiracy of Officer Massey #6310, and SGT. Salas #4442, with all three officers: Minter, Massey, and Salas, being caught on surveillance video footages at that location "1401 Broadway, Police Head Quarters, underground Garage on April 12, 2008, approximately 9:00am to 1:00pm, in "Criminal Mis-conduct", charging me with Possession For Sales of Cocaine Base 1.43 grams and Simple Possession of Cocaine Base 0.02 grams found in Room #138, of the Strip Search Room, and the back Seat of Officer Minter's, Patrol Car: On the morning of April 12, 2008, approximately 9:00am, while in the East Village by "NEAL GOOD Homeless Center", I was stopped, targeted, and harassed by Officer Minter, Badge #6052, for no apparent reason while waiting for a food drop off by Chur-Ches, because at this time April 12, 2008, I was Homeless and just returned to Society March 24, 2008, from a violation. He ran my name to see if I was on parole or probation because some guy by the name of "Michael-Johnson", had told him he had seen me smoking Crack Cocaine, and said that I also had Crack Pipe on me.

Count 2: The following civil right has been violated: 8th Amendment, Freedom
 (E.g., right to medical care, access to courts,
From Cruel and unusual Punishment.
 due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,
 etc.)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 2.]

AFTER running my name he began to Search me For the Crack Cocaine and the "pipe" and did not Find anything but Continued to harass me. In OFFICER minter's, Badge- #6052, OFFICER'S Report Narrative, page # 4 of 8, he mentioned he Latered searched a Suspect by the Name OF "Raymond Crowley", that was ON the Scene with me, - April 12, 2008, based ON his parole, and Found a glass pipe in his pocket. Raymond Crowley, was handcuffed and placed in the rear Seat OF OFFICER minter's, patrol Car. AFTER getting Caught with the Crack pipe in his pocket, Mr. Crowley, is now telling OFFICER minter, that Mr. Elmore, has crack Cocaine hidden between his butt Cheeks 1.43 grams. With this InFormation given by Mr. Raymond Crowley, OF Mr. Elmore, having Crack-Cocaine hidden between his Butt Crack, Mr. Elmore, is Searched Again by OFFICER minter, but this time with a "Trained" hand going between his butt Crack in Search For the 1.43 grams OF Cocaine Base which if it's there, OFFICER minter, WILL NOT be Able to miss it (Large piece OF Crack Rock 1.43grams) NOR the the Crack pipe - In Exhibit (B) page # 29, Lines - 9 - 28, at the - Scene "300 14th Street". NOW, OFFICER minter, has two reliable witnesses: Mr. Michael-Johnson, the Concerned Citizen which Flagged OFFICER-minter, down because he wants to keep the Community Clean OF drugs. ON page # 30 of 8, OF the OFFICER'S

Count 3: The following civil right has been violated: 8th Amendment Freedom
 (E.g., right to medical care, access to courts,
From Cruel and unusual Punishment
 due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,
 etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 3.]

Report Narrative, Stated that he witness Mr. Elmore, Smoking Crack Base and that he knew For sure that Mr. Elmore, had a "Crack Pipe" on him or in his Possession, and Officer minter, Finding Nothing on me, - No Contraband whatsoever. Unlike Mr. Raymond Crowley, the Other witness For Officer minter, he mentioned ON page # 4 OF 8, OF his Officer's Report Narrative, Where Officer minter, Found a glass Crack pipe in his pocket. Stated that Mr. Elmore, had 1.43 grams - OF Cocaine Base hidden in his butt Crack. Also in Exhibit (B), page # 18, Lines # 8-17, the Lawyer David - Thompson, Asked Officer minter, did he know that Mr. - Raymond Crowley, was Arrested Later that Same day - April 12, 2008, For being under the Influence OF a Controlled Substance (Crack Cocaine), and on Parole - After Officer minter, Released Mr. Crowley, at the scene - by giving Mr. Crowley, a Citation Y471747, For possession OF a Narcotic Paraphernalia, which he, Officer - minter, Stated this Information ON page # 5 OF 8, OF his Officer's Report Narrative. Also in Exhibit (B) page - # 18, Lines 8-17, Explains that Not only did Mr. Crowley, got Arrested Later that Same day April 12, 2008, but it also explains that somewhere ~~too~~ between April - 25 to 26, 2008, that Officer minter, did in Fact arrested Mr. Raymond Crowley, For "Petty Theft". Mr. David Thompson, Then Asked ON the Same

C. Causes of Action (You may attach additional pages alleging other causes of action and the facts supporting them if necessary.)

Count 1: The following civil right has been violated: 8th Amendment Freedom
(E.g., right to medical care, access to courts,

From Cruel and unusual Punishment

due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 1. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 1.]

..... page #18, Exhibit (B), "And this is the man (Mr. Crowley) whose word you were taking for Mr. Elmore, putting Crack Cocaine on the seat of your patrol car and in the crack of his butt? In Exhibit (B), page #12, line #15-23, Officer Minter, mentioned how another officer by the name of Mattley, which he stated was a "male" officer, came to the "scene" 300 14th Street, to assist him and watch the three suspects. Exhibit (B) page #29, line 1-2, states he did the best search of Miss. Sonya Moore, he could and let her go. And for the "records": Why would he search a "woman" suspect when he has a woman Police Officer at the scene to assist him? Officer Mattley, is a "white Police Woman Officer" that was working that area (East Village), on April 12, 2008, but was not at that "scene" 300 14th Street, with Officer Minter. Also, he "lied" about her being a man officer. In Exhibit (B), page #37, lines 24-28, and page 38, line 1-7, The Lawyer Mr. Thompson, asked: "Why weren't they in seatbelts? Officer Minter, answered, "I didn't see the need, based on his "SAFETY", the way he was trained, and what "other" officers do, nobody gets seat belted. The Lawyer asked again: "What are the seat belts in the car for? Officer Minter, stated: "For their SAFETY". Also, he has Officer Mattley, at the scene to assist him.

Count 2: The following civil right has been violated: 8th Amendment Freedom
(E.g., right to medical care, access to courts,
From Cruel and unusual Punishment
due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment,
etc.)

Supporting Facts: [Include all facts you consider important to Count 2. State what happened clearly and in
your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant,
by name, did to violate the right alleged in Count 2.]

Exhibit(B) page 30, Line 26-28 / and page 31, Line 1-27, the Law-
yer. Mr. Thompson asked: "You suspected that Mr. Elmore, might
have been under the influence of a Narcotic drug, and it
shows his lack of experience to take the Necessary
steps to make sure by "testing" / pages # 31-32, when
it comes to a suspect that he may think that's under
the influence of a drug and him being professional.
In Exhibit(B), page # 40, Lines 6-8, Mr. Thompson, asked
Officer Minter, did he personally take Mr. Crowley, out
of his patrol car? And Minter, stated: "Eventually, I did.
Now, three pages over "43" Exhibit(B), Line 3-14, it show
Officer Minter, just lied again by saying another officer sat
Mr. Crowley, outside the car other than himself. Exhibit(B),
Page 39, Line 7-28, Officer Minter, pretty much explains what
Police HEAD Quarters looks like under ground and how a
patrol car gets permitted into the gated secured area also
about the video camera's down there for "everybody's"
protection. And last, his patrol car pulling up to an area
near Room # 138, strip search room with Mr. Crowley and
Mr. Elmore, still in the back seat of his patrol car on
April 12, 2008, Police HEAD Quarters, approximately 9:00am to 1:00pm,
on "Video Camera" to find the patrol car that was assigned
to Officer Minter, on April 12, 2008, by looking for the patrol
car number which is located on the "Roof" of the car.
Even if the "Video Footages" does roll over every five
days or so, the information rolls over onto a

Count 3: The following civil right has been violated: 8th Amendment Freedom From Cruel and unusual Punishment.
(E.g., right to medical care, access to courts, due process, free speech, freedom of religion, freedom of association, freedom from cruel and unusual punishment, etc.)

Supporting Facts: [Include all facts you consider important to Count 3. State what happened clearly and in your own words. You need not cite legal authority or argument. Be certain to describe exactly what each defendant, by name, did to violate the right alleged in Count 3.]

.... "Hard Drive" - Data BANK or BASE. So with the Procedures From the Board of Directors, Commission, Etc, you just "can't" delete Information (Evidence) that Quickly. Also, Officer minter, is the ONE that is Claiming "HE" Found 1.43 grams of Cocaine base in the back seat of his patrol car at that Location Police HEAD Quarters, pointed towards (Video Camera's) his patrol car. And Last, - Strip Search - room #138, ISSUED. Simple: Get my "D.N.A" - OFF of the 0.02 grams Cocaine Base that OFFICER - MASSEY # 6310, said that he, and he ONLY ^{SAW} FALL From my undershorts. You have three OFFICERS in ONE Small Room #138, minter #6052, massey #6310, and SGT. SALAS #4442, and ALL three OFFICERS are in this Room #138, For ONE reason and ONE reason ONLY and that's to "watch" my, Mr. Elmore's, Every move to make sure I don't have any drugs or Contraband on my person, but ONLY ONE OFFICER out of the three, witness this 0.2 grams FALL From my underwear. And SGT. SALAS, "Review Video Footage", is Supervising these two young OFFICERS: minter and massey, in Lying about the discovery of the drugs, 1.43 grams, and 0.02 gram Cocaine Base, and participating in Criminal Mis-Conduct by lying on their Police Reports and OFFICER minter #6052, lying in the Court OF LAW and in uniform on April 29, 2008, Reporter's Transcript's Page 1-57/DEPT. #53

D. Previous Lawsuits and Administrative Relief

1. Have you filed other lawsuits in state or federal courts dealing with the same or similar facts involved in this case? ☐ Yes ☒ ~~No~~

If your answer is "Yes", describe each suit in the space below. [If more than one, attach additional pages providing the same information as below.]

(a) Parties to the previous lawsuit:

Plaintiffs: N/A

Defendants: N/A

(b) Name of the court and docket number: N/A

(c) Disposition: [For example, was the case dismissed, appealed, or still pending?] N/A

(d) Issues raised: N/A

(e) Approximate date case was filed: N/A

(f) Approximate date of disposition: N/A

2. Have you previously sought and exhausted all forms of informal or formal relief from the proper administrative officials regarding the acts alleged in Part C above? [E.g., CDC Inmate/Parolee Appeal Form 602, etc.] ? ☒ Yes ☐ No.

If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

Pending Internal AFFAIRS unit (Investigation)

E. Request for Relief

Plaintiff requests that this Court grant the following relief:

1. An injunction preventing defendant(s): _____

2. Damages in the sum of \$ 25,000,000.00

3. Punitive damages in the sum of \$ Same

4. Other: Same

F. Demand for Jury Trial

Plaintiff demands a trial by ☒ Jury ☐ Court. (Choose one.)

G. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 1983 Prisoner cases filed in this district, the Court has adopted a case assignment involving direct assignment of these cases to magistrate judges to conduct all proceedings including jury or bench trial and the entry of final judgment on consent of all the parties under 28 U.S.C. § 636(c), thus waiving the right to proceed before a district judge. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to utilize this efficient and expeditious program for case resolution due to the trial judge quality of the magistrate judges and to maximize access to the court system in a district where the criminal case loads severely limits the availability of the district judges for trial of civil cases. Consent to a magistrate judge will likely result in an earlier trial date. If you request that a district judge be designated to decide dispositive motions and try your case, a magistrate judge will nevertheless hear and decide all non-dispositive motions and will hear and issue a recommendation to the district judge as to all dispositive motions.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including trial, and the entry of final judgment by indicating your consent below.

Choose only one of the following:

☒ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

x 8-11-08
Date

Morris Elmer
Signature of Plaintiff

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

[C.C.P. §§ 446, 2015.5; 28 U.S.C. §1746]

I Maurice Knight am a resident of the State of California and am over the age of eighteen years and am not a party to the above-entitled action. My address is listed below.

On X 8-11-08, I served the following documents:

by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid in the United States Mail by delivering to prison officials for processing through the Institution's internal legal mail system at San Diego California, addressed as follows::

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed in the County of San Diego, California on X 8-11-08

Maurice Knight #G21298
F4/#18-1174P

P.O. Box 799004

San Diego, CA 92179-9004

Pursuant to the holding of the United States Supreme Court in Houston v. Lack 108 S. Ct. 2379, 487 U.S. 266, 101 L.Ed.2d 245 (1988) and FRAP, Rule 4 (c) inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the Institution's internal legal mail procedures.

SAN DIEGO REGIONAL ARREST / JUVENILE CONTACT REPORT

Incident No. **08040023407**

R E P O R T	ARREST REPORT		AGENCY NUMBER 08040023407	
	WARRANT Out		AGENCY SDPD	ARJIS ASSISTED? <input checked="" type="checkbox"/> Y
	ARREST DATE 04/12/2008	TIME 09:35	BEAT/DISTRICT 521	RELATED REPORTS (TYPE, NUMBER) 4-16-08 1330
	PAGE 1 OF 8		SDSID BOOKING NUMBER 8124585	
A R R E S T E E - C R I M E	CHARGE(S) 11351.5 / HS / POSS/ETC BASE/ROCK COCAINE F/S		ADDITIONAL CHARGES <input checked="" type="checkbox"/> Y	
	PERSON ARRESTED (L, F, M) Elmore, Morris Lamard		CITATION NUMBER 35,000	
	NICKNAME		D.O.B. 10/21/1964	P.O.B. Florida
	RACE B	SEX M	AGE 43	HEIGHT 5'08"
	WEIGHT 220	BUILD FAT	HAIR BLK	EYES BRO
	ALIAS/MAIDEN NAME (L, F, M) Tony, Willie			
	ARRESTEE'S ADDRESS (Transient)			
	EMPLOYER/SCHOOL	MILITARY <input checked="" type="checkbox"/> N	OCCUPATION/RANK None	HOME PHONE
	BUSINESS OR MILITARY ADDRESS		CITY	STATE ZIP
	EMERGENCY CONTACT/NEXT OF KIN (L, F, M)			
	EMERGENCY ADDRESS			
	HOME PHONE	IS SUBJECT A SUSPECTED USER OF NARCOTICS/DRUG? <input checked="" type="checkbox"/> Y	INTERPRETER REQUIRED? <input checked="" type="checkbox"/> N	LANGUAGE
	LOCATION OF ARREST 300 14TH ST		CITY SAN DIEGO	
	LOCATION OF OFFENSE 300 14TH ST		CITY SAN DIEGO	
	OFFENSE DATE 04/12/2008	OFFENSE TIME 09:09	CITIZEN ARREST? <input checked="" type="checkbox"/> N	ARRESTING OFFICER G MINTER
I.D. 6052	ADMONISHED BY G MINTER	I.D. 6052		
DID YOU UNDERSTAND EACH OF THESE RIGHTS THAT I HAVE EXPLAINED TO YOU? Refused				
HAVING IN MIND AND UNDERSTANDING YOUR RIGHTS AS I HAVE TOLD YOU, ARE YOU WILLING TO TALK WITH US? Refused				
STATEMENT <input type="checkbox"/>				
A R R E S T E E D E S C R I P T I O N	HAIR LENGTH/TYPE 5. Short	HAIR STYLE 1. Afro/Natural	FACIAL HAIR 1. Clean Shaven	COMPLEXION 2. Dark
	1. Coarse			
	SPEECH 3. Mumbles 4. Offensive 5. Quiet	VOICE 4. Low Pitch 6. Monotone	IDENTIFICATION NUMBERS	
	DRIVER'S LICENSE NO.		STATE	
	SOCIAL SECURITY NO. 257-31-6316			
	FBI NO.			
	CH NO. A26272921			
	OTHER I.D. F03648		TYPE CD	
	FURTHER SUSPECT DESCRIPTION (I.E., GLASSES, TATTOOS, TEETH, BIRTHMARKS, JEWELRY, SCARS, MANNERISMS, ETC.) Scar Stomach			
	CLOTHING DESCRIPTION Black Hoodie, Green Shirt, Gray Sweatpants, Black Shoes			
SUSPECT VEHICLE	YEAR	MAKE	MODEL	
COLOR / COLOR	BODY TYPE	LICENSE NO.	STATE	
ADDITIONAL VEHICLE IDENTIFIERS (CHROME, DAMAGE, ETC.)		VIN NUMBER	DISPOSITION OF VEHICLE	
REGISTERED OWNER (L, F, M)				
REGISTERED OWNER'S ADDRESS				
CITY				
STATE ZIP				
E V	PROPERTY TAG NOS. 052535, HQ067747		DISPOSITION OF EVIDENCE Impounded HQ	
	REPORTING OFFICER G MINTER		I.D. 6052	DIVISION C1
	REPORT DATE 04/12/2008		TIME 15:03	

PAGE 2 OF 8		AGENCY NUMBER 08040023407	
COMPANIONS	COMPANION'S NAME (L, F, M) Crowley, Raymond Leroy		
	ADDRESS [REDACTED]		
VICTIM / WITNESS	CITY SAN DIEGO		
	STATE ZIP CA 92101		
JUVENILE ONLY	PHONE	RACE B	SEX M
	D.O.B. [REDACTED] ARRESTED <input checked="" type="checkbox"/> Y ADDITIONAL COMPANIONS LISTED <input type="checkbox"/> N		
ADULT - MISD ONLY	VICTIM/WITNESS' NAME (L, F, M) Johnson, Michael		
	RESIDENT ADDRESS CITY STATE ZIP		
CITIZEN ARREST	BUSINESS ADDRESS CITY STATE ZIP		
	HOME PHONE	BUSINESS PHONE	RACE SEX D.O.B. ADDNL. VIC./WIT. LISTED
ADULT - MISD ONLY	FATHER/STEPFATHER'S NAME (L, F, M)		
	FATHER/STEPFATHER'S ADDRESS CITY STATE ZIP HOME PHONE BUSINESS PHONE		
ADULT - MISD ONLY	MOTHER/STEPMOTHER'S NAME (L, F, M)		
	MOTHER/STEPMOTHER'S ADDRESS CITY STATE ZIP HOME PHONE BUSINESS PHONE		
ADULT - MISD ONLY	SCHOOL GRADE LIVES WITH		
	PARENTS NOTIFIED BY: WHOM AND HOW DATE TIME RELEASE DATE RELEASE TIME		
ADULT - MISD ONLY	FIELD DISP.: _____		
	ATTITUDE OF JUVENILE ATTITUDE OF PARENTS / GUARDIAN		
ADULT - MISD ONLY	DET. DISPO.: <input type="checkbox"/> Refer Court/Prob <input type="checkbox"/> Dept. Diversion <input type="checkbox"/> Counsel/Informal <input type="checkbox"/> Other: _____		
	ADDITIONAL CHARGES: 11350(A)/HS/POSSESS NARCOTIC CONTROLLED SU; 148.9(A)/PC/FALSE REPRESENTATION OF SELF T; 3056(F)/PC/VIOLATION PAROLE/FELONY;		
ADULT - MISD ONLY	I have arrested: _____		
	I know that pursuant to Section 849 of the Penal Code of the State of California, it is necessary for me to sign a complaint stating the charge against the prisoner, which complaint must be made before a magistrate, and I agree to sign said complaint and appear in said matter without delay.		
ADULT - MISD ONLY	Date: _____ Computer generated form, signature is not obtained; disclaimer read to the citizen.		
	ARRESTING CITIZEN (L, F, M) PRINT		
ADULT - MISD ONLY	RESIDENT ADDRESS CITY STATE ZIP		
	BUSINESS ADDRESS CITY STATE ZIP		
ADULT - MISD ONLY	HOME PHONE	BUSINESS PHONE	RACE SEX D.O.B.
	Check each reason for not releasing the subject with a written notice to appear. (ADULTS ONLY)		

COPY

Continued From: ARR/JUV. CON.		San Diego Regional Officer's Report Narrative		Incident Number 08040023407	
Page 3 of 8				Case Number	
Code Section And Description (one incident only) 11351.5 / HS / POSS/ETC BASE/ROCK COCAINE F/S			Date 04/12/2008	Day of Week SAT	Time 09:35
Location Of Incident (Or Address) 300 14TH ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Elmore, Morris Larnard					
Property Tag No.(s) 052535, HQ067747					

SYNOPSIS:

On 04-12-08, Michael Johnson told me he witnessed Morris Elmore smoke cocaine using a pipe. I detained Elmore and his companion, Raymond Crowley. Crowley told me, in private, Elmore had cocaine base hidden in his pants. Elmore lied about his name and I transported him to police headquarters to verify his identity. I learned Elmore was on parole for drug sales. I found a large piece of off-white substance in my patrol car where Elmore was seated. I arrested Elmore for possession of a controlled substance for sales, possession of a controlled substance, false identification to a police officer, and a parole violation. I booked him into county jail

ORIGIN:

On 04-12-08, at approximately 0905 hours, I was on patrol in the East Village community of San Diego. Based on my training and experience, I know this is a very high narcotics area. I spend a majority of my workday patrolling this area for narcotics related offenses. I have made numerous narcotics arrests in the East Village.

INVESTIGATION:

Michael Johnson (), a concerned citizen, flagged me down while I was driving at 1400 K Street. Johnson told me he wants to keep the community clean of drugs. Johnson pointed to a group of 2 black male adults and 1 black female adult walking southbound at 300 14th Street. One of the black males was wearing a black "hoodie" sweatshirt. Johnson told me he watched the male with the black sweatshirt smoking cocaine with a pipe. Johnson also told me male with the sweatshirt had a pipe with him. I would later identify this male, using a prior booking photograph, as Morris Elmore (10-21-64)

I drove south on 300 14th Street watched the group slowing walking southbound. They did not appear to be in the area to conduct business. I drove up to the group, but did not activate my overhead emergency lights or block their path. I asked the group if they would, "Come over and talk to me." The group, including Elmore, stopped to speak with me. I asked anyone in the group if they were on probation or parole. The other male in the group, Raymond Crowley (08-15-70), told me he was on parole. The female in the group, Sonya Moore (), told me she was on probation for a narcotics arrest.

Based on the information from Johnson, my knowledge of the area, my narcotics experience and training, Crowley's parole and Moore's probation, I detained the group for loitering for narcotics.

Reporting Officer G MINTER	ID # 6052	Division C1	Approved By	Date of Report 04/12/2008	Time 15:03
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COPY

Continued Y

Continued From: ARR/JUV. CON.		San Diego Regional Officer's Report Narrative		Incident Number 08040023407	
Page 4 of 8				Case Number	
Code Section And Description (one incident only) 11351.5 / HS / POSS/ETC BASE/ROCK COCAINE F/S			Date 04/12/2008	Day of Week SAT	Time 09:35
Location Of Incident (Or Address) 300 14TH ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Elmore, Morris Larnard					
Property Tag No.(s) 052535, HQ067747					

I asked Elmore for his name and birthday. Elmore told me his name was "Willie Tony" and his birthday was 10-2-54. I repeatedly asked for Elmore's name and each time he told me, "Willie Tony." Elmore did not have identification on him. I was unable to verify his identity using my mobile computer.

As I communicated with Elmore, I noticed his speech was slurred. Elmore was sweating and his pupils were slightly dilated. I also detained Elmore while I evaluated if he was under the influence of a controlled substance.

I searched Crowley, based on his parole, and found a glass pipe in his pocket. I handcuffed him and placed him on the rear seat of my patrol car. As I placed him on the rear seat, he told me, "That guy has rock in his ass man." I know the term "rock" is street slang for cocaine base. I asked Crowley how he came to know this information. Crowley told me, "He showed it to me earlier."

I asked Elmore for permission to search him. Elmore told me, "Go ahead." I did not initially find contraband on Elmore. I did locate Elmore's brown wallet, which was in the waistband of his grey sweatpants. I looked inside of Elmore's wallet and found numerous currency bills, which were located in a very disorganized manner. Many of the bills were folded up. Based on my narcotics training and experience, I know when a drug dealer takes funds from a buyer, they will crumple the bill up and quickly put it into a location like a wallet or pocket.

I also located a cellular phone in Elmore's sweatshirt pocket, which he eventually took to jail with him.

I transported Elmore to police headquarters to verify his identity. I also transported Crowley to police headquarters to verify his parole conditions. I conducted a CAL-ID (fingerprints) of Elmore. He continually insisted his name was Willie Tony. While waiting for the results of the CAL-ID check, Crowley told me, "The guy pulled out the rock and put it under his ass. He asked me to take it, but I told him no!"

I removed Elmore from the patrol car. I looked under the seatbelt (next to Elmore) in my patrol car. I located a large "rock" of off-white substance, sealed in a piece of plastic. The rock was approximately 3 inches from where Elmore's hands were handcuffed. I recovered it as evidence.

The results of the CAL-ID search came back, and I learned Elmore was on parole for selling narcotics. Sergeant Salas (4442) authorized a strip search/visual body cavity search for Elmore. Sergeant Salas did this by signing the PD-2581 form. Sergeant Salas, Officer Massey (6310), and I took Elmore into Room 138 of headquarters. Room 138 is a secured room, away from public view. I ordered Elmore to remove his clothing, in order to verify he did not have additional contraband. As he removed his pants, a small piece of an off-white substance fell to the floor. Officer Massey directed my attention to the substance, as he saw it

Reporting Officer G MINTER	ID # 6052	Division C1	Approved By	Date of Report 04/12/2008	Time 15:03
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Continued Y

Continued From: ARR/JUV. CON.		San Diego Regional Officer's Report Narrative		Incident Number 08040023407	
Page 5 of 8				Case Number	
Code Section And Description (one incident only) 11351.5 / HS / POSS/ETC BASE/ROCK COCAINE F/S			Date 04/12/2008	Day of Week SAT	Time 09:35
Location Of Incident (Or Address) 300 14TH ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Elmore, Morris Larnard					
Property Tag No.(s) 052535, HQ067747					

fall. I recovered it as evidence. The small rock of off-white substance had a similar consistency as the large rock of off-white substance.

I impounded the two rocks of off-white substance at headquarters on tag #HQ067747. I impounded the \$183 in cash at headquarters on tag #052535. There were (4) \$20 bills, (2) \$10 bills, (12) \$5 bills, and (23) \$1 bills. I issued Elmore a receipt for the currency, which he refused to sign.

I read Elmore his Miranda rights. Elmore refused to answer my questions.

Elmore possessed a large rock of off-white substance, a large amount of unorganized cash, and a cellular phone. Elmore was loitering in a high narcotics area, is on parole for narcotics sales, and did not possess any narcotic paraphernalia. Based on these observations, I believed Elmore possessed the controlled substance with the intent to sell it.

I was unable to reach Crowley and Elmore's parole agent, Agent Chandler (San Diego). I was unable to get a parole hold for Crowley, and issued him citation Y471747 for possession of narcotic paraphernalia. I released him at the scene.

I received a parole hold for Elmore through Sacramento, due to his new felony charges.

I booked Elmore into county jail for possession of a controlled substance for sales, possession of a controlled substance, false identification to a police officer, and a parole violation.

While booking Elmore into jail, he was verbally abusive. After I freed Elmore from his handcuffs, he took his pants down, grabbed onto and showed me his penis, and told me, "You can suck this." Twice.

NARCOTIC EXPERIENCE:

I am a police officer with the San Diego Police Department and have been since October 2004. I am a court-recognized expert in the sales, packaging, and distribution of narcotics (02-05-07, DA #ABY51701). I am also a court-recognized expert regarding people under the influence of controlled substances (09-29-05, DA #ABO83001). I have manufactured methamphetamine and GHB, under the observation of DEA chemists. I have worked in the Narcotics section of the San Diego Police Department. I have posed as a narcotics user, and purchased narcotics in an undercover capacity. I have conducted surveillance on narcotics users and sellers, and have observed their foot and vehicle traffic patterns.

During my time as a police officer, I have investigated drug activity and am familiar with the manner in which drugs are packaged, marked and consumed. I have engaged drug users in conversations and have

Reporting Officer G MINTER	ID # 6052	Division C1	Approved By	Date of Report 04/12/2008	Time 15:03
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Continued Y

Continued From: ARR/JUV. CON.		San Diego Regional Officer's Report Narrative		Incident Number 09040023407	
Page 6 of 8				Case Number	
Code Section And Description (one incident only) 11351.5 / HS / POSS/ETC BASE/ROCK COCAINE F/S			Date 04/12/2008	Day of Week SAT	Time 09:35
Location Of Incident (Or Address) 300 14TH ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Elmore, Morris Larnard					
Property Tag No.(s) 052535, HQ067747					

become familiar with the ordinary jargon used. I received 12 hours of formal training in the police academy where I learned the identification, symptomology and sales of many types of illegal drugs, including marijuana, cocaine, methamphetamine, PCP and heroin. After the academy, my training continued under a field-training program. I have also attended about three formal courses regarding the subject of narcotic usage. I have made, or have been involved with, over 100 arrests of individuals for being either under the influence of, or in possession of, controlled substances. I have obtained biological evidence from individuals suspected by me of being under the influence of a controlled substance and have seized items that I suspected to be narcotics that were later tested scientifically with positive results.

BACKGROUND:

Prior to the beginning of my shift, I searched the back seat of my patrol car for contraband. I did not locate any contraband, and I noted this in my Officer's Daily Journal. Earlier in the afternoon I transported another prisoner using my patrol vehicle. After releasing the prisoner, I again checked the rear seat of my patrol vehicle. I did not locate contraband.

STATEMENTS:

None.

EVIDENCE:

I impounded \$183 in cash at headquarters on tag 052535. I impounded 1 large rock of off-white substance and 1 small rock of off-white substance on tag HQ067747.

INJURIES:

None.

PROPERTY DAMAGE:

None.

FOLLOW-UP:

None.

RELATED REPORTS:

Reporting Officer G MINTER	ID # 6052	Division C1	Approved By	Date of Report 04/12/2008	Time 15:03
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Continued Y

Continued From: ARR/JUV. CON.		San Diego Regional Officer's Report Narrative		Incident Number 08040023407	
Page 7 of 8				Case Number	
Code Section And Description (one incident only) 11351.5 / HS / POSS/ETC BASE/ROCK COCAINE F/S			Date 04/12/2008	Day of Week SAT	Time 09:35
Location Of Incident (Or Address) 300 14TH ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Elmore, Morris Larnard					
Property Tag No.(s) 052535, HQ067747					

None.

Approved By: Sgt P. E. Schneider #3333

Reporting Officer G MINTER	ID # 6052	Division C1	Approved By	Date of Report 04/12/2008	Time 15:03
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Continued Y

Continued From: ARR/JUV. CON.		San Diego Regional Officer's Report Narrative		Incident Number 08040023-107	
Page 8 of 8				Case Number	
Code Section And Description (one incident only) 11351.5 / HS / POSS/ETC BASE/ROCK COCAINE F/S			Date 04/12/2008	Day of Week SAT	Time 09:35
Location Of Incident (Or Address) 300 14TH ST			City	District	Beat
Person(s) Involved: Victim					
Suspect (If Named) Elmore, Morris Larnard					
Property Tag No.(s) 052535, HQ067747					

Reporting Officer G MINTER	ID # 6052	Division C1	Approved By	Date of Report 04/12/2008	Time 15:03
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Continued Y

**SAN DIEGO POLICE DEPARTMENT
INVESTIGATOR'S FOLLOW-UP REPORT
FELONY NARCOTIC ARREST**

Date: 4-12-08Time: 09135Location: 300 14TH

SUSPECT:	BOOKING INFORMATION:
NAME: <u>ELMORE, MORRIS</u>	#: <u>8126585</u>
DOB: <u>10-21-64</u>	CHARGES: <u>11350 (A) POSS NARCO</u> <u>3056 11351.5 POSS NARCO</u> <u>FIS</u> <u>VIOL. 148.9 (A) FALSE REP</u> <u>PAROLE</u>
	IN CUSTODY: <u>X</u> YES <u> </u> NO

NARCOTIC TAG(S):	TEST RESULTS
<u>H/2 067797</u>	<u>1.93</u> <u>.02 / GRAS COCAINE BASE</u>

Arresting Officer: MINTER 6052Investigating Officer: KATHAN 2931

Included with this report are the following:

- ☒ Arrest Report
☒ Presumptive Test Results
☒ Investigator's Follow-up
☐ Photographs

CASE SUMMARY:

On 4-12-08, at approximately 09135 hours, Officer MINTER
 Contacted ELMORE at 300 14TH
 As described in the attached report, ELMORE was arrested for
11350 (A), 11351.5, 148.9 (A), 3056.

The presumptive narcotic test results were (see above). Therefore, I request that
MINTER be charged with THE ABOVE LISTED CHARGES.

Investigation Officer: KATHAN Central/NARCO (619) 744-9549Approved by: SCA Date: 4/14/08 Time: 12:30

STATE OF CALIFORNIA

PAROLE REVOCATION HEARING NOTICE AND WITNESS DETERMINATION

CDCR 1654 (Rev. 08/05)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

PAGE 1 of 1 PAGES

SECTION I - PAROLEE INFORMATION

CDCR NUMBER F03648	NAME (LAST, FIRST, MI) ELMORE, MORRIS	TYPE OF HEARING: <input checked="" type="checkbox"/> REVOCATION <input type="checkbox"/> PSYCHIATRIC TREATMENT		VIOLATION REPORT DATED: 4/21/08
AGENT OF RECORD Jacqueline Charles	PAROLE UNIT SD #2			
<input checked="" type="checkbox"/> CUSTODY LOCATION SOC5 <input type="checkbox"/> NOT IN CUSTODY: (ADDRESS)				

HEARING SCHEDULED FOR: (DATE) _____ (TIME) _____ (HEARING LOCATION) _____

SECTION II - WITNESSES BEING CALLED

WITNESSES BEING CALLED	BADGE NUMBER	NOTIFIED		WIT. DESIG.**	
		*METH	DATE	STATUS	REQ.
1. G. Minter	6052				
2. SDPD MASSEY	6310				
3.					
4.					
5.					
6.					
FEARFUL WITNESSES	REASON:				
7.					
8.					

*NOTIFICATION METHOD

M - MEMO PC - PERSONAL CONTACT
 L - LETTER SP - SUBPOENA
 PH - PHONE PN - PAROLEE NOTIFY

**USE ABBREVIATION FOR WITNESS DESIGNATION

STATUS:
 A - ADVERSE F - FRIENDLY
 FW - FEARFUL WITNESS V - VICTIM

REQUESTED BY:

S - STATE
 P - PAROLEE

SECTION III - ATTORNEY INFORMATION

ATTORNEY OF RECORD	ADDRESS (STREET, CITY, ZIP)	TELEPHONE NUMBER
PAROLEE / ATTORNEY COPIES PROVIDED (DATE):	MAILED BY:	DELIVERED BY:
ADDRESS (STREET, CITY, ZIP)		TELEPHONE NUMBER

SECTION IV - ADDRESSES OF WITNESSES BEING CALLED

1. **1401 Broadway, SAN Diego CA. 92101 619 531-2845**
2. **1401 Broadway, SAN Diego CA. 92101 619 531-2845**
- 3.
- 4.
- 5.
- 6.

SECTION V - FEARFUL WITNESS CONTACT INFORMATION

NAME	ADDRESS	TELEPHONE NUMBER
7.		
8.		

DISTRIBUTION:
 ORIGINAL-REVOCATION PACKAGE -WHITE, 1ST COPY -BPH -GREEN, 2ND COPY-AGENT OF RECORD-YELLOW, 3RD COPY-PAROLEE'S COPY-PINK, 4TH COPY-ATTORNEY'S COPY-GOLD

From: SDPD CRIME LAB

619 531 2520

04/14 08 11:15

#860 P.008/009



SAN DIEGO POLICE DEPARTMENT
Forensic Science Section

PRELIMINARY Narcotics Analysis Report



AN ASCLD LAB ACCREDITED LABORATORY

SUSPECT: ELMORE, MORRIS
IMPOUND #: 067747
INCIDENT TYPE: NARCOTICS
INCIDENT DATE: 4/12/2008
OFFICER/DIVISION: MINTER/CENTRAL
CRIMINALIST: LARRY DALE

ITEMS EXAMINED:

Item 1: 1 plastic baggie containing rock-like material.
Item 2: 1 plastic baggie containing rock-like material.

EXAMINATION RESULTS:

Item 1 was examined and found to have a net weight of 1.43 grams. Item 1 contains cocaine base. This evidence was analyzed using a combination of color and crystal tests.

Item 2 was examined and found to have a net weight of 0.02 grams. Item 2 contains cocaine base. This evidence was analyzed using a combination of color and crystal tests.

ADDITIONAL INFORMATION:

None.

DISPOSITION OF EVIDENCE:

All evidence was returned to the Narcotics Vault.

[Handwritten signature]

Larry Dale 8166
Criminalist
Forensic Chemistry Section
4/14/2008

Technical Review: *[Handwritten signature]* Date: 4/14/08 Administrative Review: *[Handwritten signature]* Date: 4/14/08

All weights were established at the time of the preliminary examination.



THE CITY OF SAN DIEGO
POLICE DEPARTMENT

Incident # 08040023407

STRIP SEARCH / VISUAL BODY CAVITY SEARCH*
AUTHORIZATION

I, PAUL H. SALAS, SGT 4442, authorize
PRINT SUPERVISOR'S NAME, RANK, ID #

GREG MENTOR, MDT, 6052 (M/F)
PRINT SEARCHER'S NAME, RANK, ID # CIRCLE SEARCHER'S GENDER

to conduct a ☒ strip search ☐ visual body cavity search of

ELMORE, MORRIS, L. (M/F)
PRINT SUBJECT'S NAME CIRCLE SUBJECT'S GENDER

on APRIL 12 2008 at SDPD HQ, 1401 BROADWAY SU.
PRINT DATE & TIME PRINT LOCATION OF SEARCH

pursuant to Penal Code Section 4030 and in accordance with Department Policy 6.01 (II.B.7).

As the supervisor authorizing this search, I believe that the subject is concealing a weapon or contraband based on the following **SPECIFIC FACTS** related to this arrest:

ON PAROLE FOR POSS. OF SALES OF A CONT. SUBSTANCE, IS UNDER ARREST FOR
POSS. OF A CONTROLLED SUBSTANCE.

This search meets **ALL** the following requirements:

- ☒ The subject to be searched has been lawfully arrested for an offense involving:
☐ weapons ☒ controlled substance(s) ☐ violence.
- ☒ The person conducting the search is of the same gender as the subject to be searched.
- ☒ The search will be conducted in an area of privacy such that it may not be observed by any persons not participating in the search.
- ☒ This form was completed and the supervisor's authorization was given prior to conducting a search.

Results of the search (including a list of items removed from the subject):

1 SMALL "ROCK" OF OFF-WHITE SUBSTANCE (ALL CLOTHES REMOVED)

[Signature]
Signature of Officer Conducting Search

04-12-08

Date

[Signature] #4442
Signature of Supervisor Authorizing Search

04-12-08

Date

**THIS FORM MUST BE COMPLETED BEFORE EVERY STRIP SEARCH OR VISUAL BODY CAVITY SEARCH.
NON-COMPLIANCE WITH THE REQUIREMENTS OF PENAL CODE SECTION 4030 IS A MISDEMEANOR.**

* "strip search" - a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person (P.C. 4030 (c)).

"visual body cavity search" - a visual inspection of a body cavity, which is only the stomach or rectal cavity of a person, and vagina of a female person (P.C. 4030 (d)(1)(2)).

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

DEPARTMENT 53

BEFORE HON. FREDERICK MAGUIRE

Exhibit (B)

THE PEOPLE OF THE STATE OF
CALIFORNIA,

PLAINTIFF,

VS.

MORRIS ELMORE,

DEFENDANT.

CASE NO. CD213010

DA NO. ACG304

PRELIMINARY HEARING

REPORTER'S TRANSCRIPT

APRIL 29, 2008

PAGES 1-57

APPEARANCES:

FOR THE PEOPLE:

BONNIE DUMANIS
DISTRICT ATTORNEY
BY: JULIANNE KARR
DEPUTY DISTRICT ATTORNEY

FOR THE DEFENDANT:

STEVEN J. CARROLL
PUBLIC DEFENDER
BY: DAVID THOMPSON
DEPUTY PUBLIC DEFENDER

CHRISTINE EDDY, CSR NO. 13000
OFFICIAL COURT REPORTER
SAN DIEGO, CA 92101

COPY

F I L E D
Clerk of the Superior Court
APR 30 2008
By: C. ELMORE, Deputy

SAN DIEGO, CALIFORNIA; TUESDAY, APRIL 29TH, 2008;

9:15 A.M.

THE COURT: LET'S GO ON THE RECORD WITH PEOPLE
VERSUS MORRIS ELMORE, CD213010. APPEARANCES, PLEASE.

MS. KARR: GOOD MORNING, YOUR HONOR. JULIANNE
KARR ON BEHALF OF THE PEOPLE.

MR. THOMPSON: DAVID THOMPSON, OFFICE OF THE
PUBLIC DEFENDER, ON BEHALF OF MR. ELMORE, WHO IS PRESENT
IN CUSTODY.

THE COURT: PRELIMINARILY, I TRUST THERE IS A
MOTION TO EXCLUDE. PEOPLE, HOW MANY WITNESSES DO YOU
HAVE?

MS. KARR: WE HAVE ONE, YOUR HONOR.

THE COURT: ANYTHING ELSE, PRELIMINARILY?

MS. KARR: YES, YOUR HONOR. AT THIS TIME, THE
PEOPLE MOVE TO DISMISS COUNT 1, HEALTH AND SAFETY CODE
SECTION 11351.5, BASED OFF OF INSUFFICIENT EVIDENCE AT
THIS TIME.

THE COURT: ALL RIGHT. SO YOU WANT TO ARGUE
THAT?

MR. THOMPSON: NO, YOUR HONOR.

THE COURT: THAT'S GRANTED. AND THEN, NUMBER
TWO?

MS. KARR: EXCUSE ME, YOUR HONOR?

THE COURT: NUMBER TWO? YOU ARE STILL
STANDING.

MS. KARR: THE PEOPLE ARE READY TO PROCEED.

THE COURT: ANYTHING ELSE, PRELIMINARILY, MR.

1 THOMPSON?

2 MR. THOMPSON: NO, YOUR HONOR.

3 THE COURT: GO AHEAD. JUST CALL YOUR WITNESS,
4 PLEASE.

5 MS. KARR: THE PEOPLE CALL OFFICER GREGORY
6 MINTER.

7 GREGORY MINTER,
8 CALLED BY THE PEOPLE, AFTER HAVING BEEN DULY SWORN,
9 TESTIFIED AS FOLLOWS:

10 THE WITNESS: I DO.

11 THE CLERK: THANK YOU. PLEASE HAVE A SEAT AT
12 THE WITNESS STAND. PLEASE STATE YOUR FULL NAME AND
13 SPELL YOUR LAST NAME FOR THE RECORD.

14 THE WITNESS: SURE. IT'S GREGORY MINTER,
15 M-I-N-T-E-R.

16 THE CLERK: THANK YOU.

17 DIRECT EXAMINATION

18 BY MS. KARR:

19 Q. HOW ARE YOU EMPLOYED?

20 A. AS A POLICE OFFICER WITH THE SAN DIEGO POLICE
21 DEPARTMENT.

22 Q. HOW LONG HAVE YOU BEEN A SWORN PEACE OFFICER?

23 A. ABOUT THREE YEARS.

24 Q. HAVE YOU SUCCESSFULLY COMPLETED A TRAINING
25 COURSE CERTIFIED BY THE COMMISSION ON PEACE OFFICERS
26 STANDARDS AND TRAINING, WHICH INCLUDES TESTIFYING AT
27 PRELIMINARY EXAMINATIONS?

28 A. YES, I HAVE.

1 Q. WHAT IS YOUR CURRENT ASSIGNMENT?

2 A. I'M ASSIGNED TO PATROL IN OUR CENTRAL
3 DIVISION.

4 Q. CAN YOU PLEASE DESCRIBE YOUR FORMAL TRAINING
5 AND ON-THE-JOB EXPERIENCE REGARDING RECOGNITION OF AND
6 USABLE QUANTITIES OF CONTROLLED SUBSTANCES, SPECIFICALLY
7 COCAINE BASE.

8 A. SURE. I HAD 12 HOURS OF FORMAL TRAINING IN
9 THE ACADEMY. I'VE MADE ABOUT 150 ARRESTS FOR
10 POSSESSION; ABOUT 30 FOR SALES. I'M A MEMBER OF THE
11 CALIFORNIA NARCOTICS OFFICERS ASSOCIATION. I HAVE
12 WORKED WITH OUR NARCOTICS TEAM, PURCHASING COCAINE BASE
13 IN AN UNDERCOVER CAPACITY. I HAVE TESTIFIED AS AN
14 EXPERT FOR SALES AND POSSESSION OF COCAINE.

15 Q. WERE YOU ON DUTY APRIL 12, 2008, APPROXIMATELY
16 9:00 A.M.?

17 A. YES, I WAS.

18 Q. AT THAT TIME, DID YOU RECEIVE A STATEMENT FROM
19 A CONCERNED CITIZEN REGARDING A GROUP LOITERING IN THE
20 AREA OF 300 14TH STREET?

21 A. YES, I DID.

22 Q. IS THAT IN SAN DIEGO COUNTY?

23 A. IT IS.

24 Q. CAN YOU PLEASE DESCRIBE WHAT THAT CONCERNED
25 CITIZEN TOLD YOU.

26 A. SURE. HE TOLD ME THAT THE GROUP HAD BEEN
27 SMOKING COCAINE AND THAT ONE OF THEM WEARING -- A MALE
28 WEARING A BLACK HOODIE STILL HAD A PIPE IN HIS POCKET

1 AND THAT THEY WERE WALKING SOUTHBOUND ON 14TH.

2 Q. DID THE CONCERNED CITIZEN YOU SPOKE WITH, DID
3 THAT CITIZEN POINT OUT THAT GROUP TO YOU?

4 A. YES, HE DID.

5 Q. AND APPROXIMATELY HOW FAR WAS THAT GROUP FROM
6 YOU AT THAT TIME?

7 A. MAYBE 100 -- 150 FEET.

8 Q. DID YOU HAVE A CLEAR VISUAL OF THAT GROUP?

9 A. YES, I DID.

10 Q. WHAT DID YOU DO AFTER YOU SPOKE WITH THE
11 CONCERNED CITIZEN?

12 A. I DROVE SOUTHBOUND ON 14TH AND CONTACTED THE
13 GROUP.

14 Q. AT THAT TIME, DID YOU OBSERVE AN INDIVIDUAL
15 KNOWN AS MORRIS ELMORE WITHIN THAT GROUP?

16 A. YES, I DID.

17 Q. DO YOU SEE THAT INDIVIDUAL IN THE COURTROOM
18 TODAY?

19 A. I DO.

20 Q. COULD YOU PLEASE POINT OUT THAT INDIVIDUAL AND
21 DESCRIBE AN ARTICLE OF CLOTHING THAT INDIVIDUAL IS
22 WEARING.

23 A. YES. HE IS SEATED AT DEFENDANT'S TABLE,
24 WEARING THE BLUE JUMPSUIT.

25 **THE COURT:** THE RECORD WILL REFLECT
26 IDENTIFICATION OF MR. THOMPSON'S CLIENT.

27 **MS. KARR:** THANK YOU, YOUR HONOR.

28

1 BY MS. KARR:

2 Q. WHAT DID YOU DO WHEN YOU APPROACHED THE GROUP?

3 A. I PULLED UP NEXT TO THEM ON THE STREET AND
4 ASKED -- I SAID, "CAN I TALK TO YOU?"

5 Q. WHAT DID THEY SAY?

6 A. ONE OF THEM, NOT MR. MORRIS, WALKED OVER TO ME
7 AND SAID, "SURE," SO I STARTED TALKING TO HIM.

8 Q. WHAT HAPPENED?

9 A. I ASKED IF THEY WERE ON PROBATION OR PAROLE.
10 ONE IN THE GROUP SAID PROBATION; ONE IN THE GROUP SAID
11 PAROLE. MR. ELMORE SAT ON THE SIDEWALK.

12 Q. DID ANY OF THOSE INDIVIDUALS MATCH THE
13 DESCRIPTION PROVIDED BY THE CONCERNED CITIZEN AS THE
14 INDIVIDUAL THAT WAS SMOKING THE COCAINE?

15 A. YES.

16 Q. WHO MATCHED THAT DESCRIPTION?

17 A. MR. ELMORE WAS WEARING THE HOODIE.

18 Q. AFTER YOU -- AFTER THE OTHER TWO INDIVIDUALS
19 ADMITTED THEY WERE ON EITHER PROBATION OR PAROLE, WHAT
20 HAPPENED?

21 A. I DETAINED THE WHOLE GROUP FOR LOITERING WITH
22 THE INTENT TO USE NARCOTICS.

23 Q. DID YOU ASK THE DEFENDANT FOR IDENTIFICATION?

24 A. I DID.

25 Q. AND WHAT HAPPENED?

26 A. HE TOLD ME HE DIDN'T HAVE ANY AND TOLD ME HIS
27 NAME WAS WILLIE TONY.

28 Q. WAS HE ABLE TO PROVIDE A DATE OF BIRTH?

1 A. YES, HE WAS.

2 Q. DID YOU ATTEMPT TO CONFIRM HIS IDENTIFICATION?

3 A. I DID.

4 Q. WAS HE ABLE TO PROVIDE ANY FORM OF
5 IDENTIFICATION?

6 A. NO, HE WAS NOT.

7 Q. DID YOU ATTEMPT TO IDENTIFY HIM USING YOUR
8 MOBILE COMPUTER FROM YOUR PATROL VEHICLE?

9 A. YES.

10 Q. WERE YOU SUCCESSFUL?

11 A. NO.

12 Q. WHAT DID YOU DO AT THAT POINT?

13 A. AT THAT POINT, I CONTACTED ANOTHER INDIVIDUAL
14 IN THE GROUP, WHO SAID HE WAS ON PAROLE, AND DEALT WITH
15 HIM ON THE SIDE. I EVENTUALLY TRANSPORTED MR. ELMORE
16 DOWNTOWN TO CONFIRM HIS IDENTITY.

17 Q. I WANT TO SPEAK ABOUT THE OTHER INDIVIDUAL FOR
18 A MOMENT. ARE YOU AWARE OF THE NAME OF THAT OTHER
19 INDIVIDUAL YOU ARE REFERRING TO?

20 A. MR. CROWLEY.

21 Q. AND, AT SOME POINT DURING -- WHILE SPEAKING
22 WITH THIS GROUP, DID YOU YOU PLACE MR. CROWLEY UNDER
23 ARREST?

24 A. I DID.

25 Q. DID YOU PLACE HIM IN YOUR PATROL VEHICLE?

26 A. YES.

27 Q. WHEN YOU PLACED HIM IN YOUR PATROL VEHICLE,
28 DID HE MAKE ANY VOLUNTARY STATEMENTS?

1 A. YES, HE DID.

2 Q. WHAT DID HE SAY?

3 A. AS SOON AS I PLACED HIM IN THE BACKSEAT, HE
4 TOLD ME THAT MR. ELMORE HAD A ROCK IN HIS BUTT CHEEK.

5 Q. HE WAS REFERRING TO THE DEFENDANT?

6 A. YES.

7 Q. DID YOU ASK HIM HOW HE KNEW THIS?

8 A. YEAH, I DID.

9 Q. WHAT DID THEY SAY?

10 A. HE TOLD ME THAT HE SHOWED IT TO HIM EARLIER.
11 AND HE DIDN'T KNOW MR. ELMORE'S NAME, BUT HE SAID, "THAT
12 GUY SHOWED IT TO ME EARLIER."

13 Q. MR. CROWLEY SAID THAT THE DEFENDANT SHOWED IT
14 TO HIM EARLIER?

15 A. YES.

16 Q. SO WHAT DID YOU DO AT THAT POINT?

17 A. I WENT OVER AND TALKED TO MR. ELMORE, AND HE
18 GAVE ME CONSENT TO SEARCH HIM. I SEARCHED HIM. I
19 DIDN'T FIND ANYTHING EXCEPT MONEY.

20 Q. AT THAT TIME, WAS THE MONEY OF SIGNIFICANCE TO
21 YOU?

22 A. IT WAS.

23 Q. WHY IS THAT?

24 A. THERE WERE A LOT OF SMALL BILLS, CRUMPLED UP
25 INSIDE THE WALLET IN AN UNORGANIZED MANNER.

26 Q. WHY DID THE MANNER OF HOW THE MONEY WAS IN THE
27 WALLET HAVE SIGNIFICANCE TO YOU?

28 MR. THOMPSON: OBJECTION. RELEVANCE. COUNT 1

1 HAS BEEN DISMISSED.

2 THE COURT: SUSTAINED.

3 BY MS. KARR:

4 Q. DID YOU HAVE AN OPPORTUNITY TO OBSERVE THE
5 DEFENDANT'S BEHAVIOR WHILE YOU WERE SPEAKING WITH HIM?

6 A. YES, I DID.

7 Q. DID HIS SPEECH APPEAR SLURRED TO YOU?

8 A. IT DID.

9 Q. DID HE APPEAR TO BE SWEATING PROFUSELY?

10 A. YES.

11 MR. THOMPSON: OBJECTION. LEADING.

12 THE COURT: OVERRULED. THE ANSWER IS OUT
13 ALREADY ANYWAY.

14 BY MS. KARR:

15 Q. DID YOU HAVE THE OPPORTUNITY TO OBSERVE HIS
16 PUPILS?

17 A. YES.

18 Q. WHAT DID YOU NOTICE?

19 A. THEY WERE SLIGHTLY DILATED.

20 Q. BASED OFF YOUR TRAINING AND EXPERIENCE, DID
21 YOU BELIEVE THE DEFENDANT TO BE UNDER THE INFLUENCE OF A
22 CONTROLLED SUBSTANCE?

23 A. YES, I DID.

24 Q. AT SOME POINT, DID YOU PLACE THE DEFENDANT
25 UNDER ARREST AS WELL?

26 A. YES.

27 Q. DID YOU PLACE HIM IN THE SAME PATROL VEHICLE
28 WHERE YOU PLACED MR. CROWLEY?

1 A. YES, I DID.

2 Q. CAN YOU PLEASE DESCRIBE WHERE THEY WERE BOTH
3 POSITIONED IN THAT VEHICLE. *NEED Video*

4 A. YES. THEY WERE BOTH IN THE BACKSEAT. MR.
5 CROWLEY WAS BEHIND ME, AND I WAS IN THE DRIVER'S SEAT.
6 MR. ELMORE WAS IN THE BACK PASSENGER -- BEHIND THE
7 PASSENGER SEAT.

8 Q. SO THE BACK, RIGHT PORTION OF THE PATROL
9 VEHICLE?

10 A. YES.

11 Q. AT THAT TIME, WERE THEY -- WERE BOTH
12 DEFENDANTS HANDCUFFED -- OR, EXCUSE ME -- WAS THE
13 DEFENDANT AND MR. CROWLEY BOTH HANDCUFFED?

14 A. YES, THEY WERE.

15 Q. DID YOU SEARCH YOUR VEHICLE PRIOR TO PLACING
16 THE DEFENDANT AND MR. CROWLEY IN THE VEHICLE?

17 A. YES, I DID.

18 Q. AT THAT TIME, DID YOU FIND ANY CONTROLLED
19 SUBSTANCES WITHIN YOUR VEHICLE?

20 A. NO.

21 Q. DID YOU THEN TRANSPORT THE DEFENDANT AND MR.
22 CROWLEY TO HEADQUARTERS? *← At Head Quarters ON*

23 A. YES. *Video Camera.*

24 Q. WHAT DID YOU DO AT HEADQUARTERS?

25 A. I TOOK MR. ELMORE'S FINGERPRINTS, JUST TO
26 CONFIRM HIS IDENTITY. AND I JUST BEGAN PROCESSING MR.
27 CROWLEY.

28 Q. DID MR. CROWLEY MAKE ANY ADDITIONAL VOLUNTARY

1 STATEMENTS TO YOU?

2 A. HE DID.

3 Q. AND WHAT DID HE SAY?

4 A. HE REPEATEDLY TOLD ME THAT MR. ELMORE HAD THE
5 COCAINE IN HIS BUTT CHEEKS AND THAT, AT ONE POINT, WHILE
6 I WAS AWAY FROM THE CAR, THAT MR. ELMORE HAD TRIED TO
7 GIVE HIM THE COCAINE. *NEED video ← HEAD*

8 Q. DID YOU SUBSEQUENTLY SEARCH THE BACKSEAT OF
9 YOUR PATROL VEHICLE AFTER YOU HAD REMOVED THE DEFENDANT
10 AND MR. CROWLEY?

11 A. I DID.

12 Q. DID YOU FIND ANYTHING OF SIGNIFICANCE?

13 A. YES, MA'AM.

14 Q. WHAT DID YOU FIND? *NEED video (To Prove He*
15 A. A LARGE PIECE OF ROCK COCAINE. *Found Rock)*

16 Q. CAN YOU PLEASE DESCRIBE EXACTLY WHERE YOU
17 LOCATED THAT PIECE, THAT SUBSTANCE YOU BELIEVED TO BE
18 ROCK COCAINE? *At Police HEAD Quarters on video*

19 A. YES. IT WAS ON THE -- OR TOWARDS THE RIGHT
20 PASSENGER SIDE, UNDERNEATH THE SEATBELT, I GUESS, THE
21 FASTENER, RIGHT -- JUST TO THE LEFT OF WHERE MR. ELMORE
22 WOULD HAVE BEEN. *Evidence → video*

23 Q. SO IT WOULD HAVE BEEN THE SMALLER BELT BUCKLE,
24 SO TO SPEAK?

25 A. YES.

26 Q. AND IT WAS UNDERNEATH THAT STRAP?

27 A. IT WAS.

28 Q. WAS IT ESSENTIALLY CRAMMED UNDERNEATH THERE?

1 OR HOW WOULD YOU DESCRIBE ITS POSITIONING?

2 A. IT WAS JUST, I GUESS, SITTING ON THE SEAT, AND
3 THEN THE SEATBELT WAS JUST COVERING IT.

4 Q. AND APPROXIMATELY HOW MANY INCHES WAS THAT
5 FROM THE DEFENDANT? video, video, video

6 A. THREE, ABOUT.

7 Q. THREE INCHES?

8 A. YES.

9 Q. AND APPROXIMATELY HOW FAR WAS THAT SUBSTANCE
10 YOU BELIEVED TO BE COCAINE BASE FROM MR. CROWLEY?

11 A. PROBABLY 12 INCHES.

12 Q. WOULD IT HAVE BEEN FAIRLY DIFFICULT FOR MR.
13 CROWLEY TO PLACE IT IN THAT POSITION, GIVEN THAT HIS
14 HANDS WERE HANDCUFFED?

15 **MR. THOMPSON:** OBJECTION. SPECULATION. CALLS
16 FOR SPECULATION.

17 **THE COURT:** SUSTAINED, ON OTHER GROUNDS.

18 **BY MS. KARR:**

19 Q. I JUST WANT TO CLARIFY. DURING THE ENTIRE
20 TIME YOU TRANSPORTED THE DEFENDANT AND MR. CROWLEY, THEY
21 WERE BOTH HANDCUFFED?

22 A. YES, THEY WERE.

23 Q. WERE THEY ALSO BELTED INTO THE VEHICLE?

24 A. NO. ← why?

25 Q. THEY WERE NOT? ← Even the DA is surprised/Law

26 A. THEY WERE NOT. ←

27 Q. WHEN YOU WERE DRIVING, THE ENTIRE TIME, DID
28 YOU EVER OBSERVE MR. CROWLEY MOVE OVER TOWARDS THE

1 DEFENDANT'S SIDE OF THE VEHICLE?

2 A. I DID NOT.

3 Q. AFTER YOU SEARCHED THE VEHICLE, WHAT HAPPENED?

4 A. I TOOK MR. ELMORE OUT, SEARCHED THE VEHICLE,

5 AND FOUND THE COCAINE AND RECOVERED IT. *Need video*

6 Q. DID YOU LATER GO TO CONFIRM THE RESULTS OF THE
7 CAL I.D. CHECK --

8 A. I DID.

9 Q. THE COMPUTER CHECK?

10 A. I DID.

11 Q. AND WHAT DID YOU LEARN?

12 A. I LEARNED THAT MR. ELMORE WAS ON PAROLE FOR
13 NARCOTICS OFFENSES.

14 Q. DID YOU ALSO LEARN AT THAT TIME THAT HIS TRUE
15 NAME WAS MORRIS ELMORE?

16 A. I DID.

17 Q. DID YOU ASK FOR A STRIP SEARCH OF THE
18 DEFENDANT TO BE PERFORMED?

19 A. YES, I DID.

20 Q. WAS A STRIP SEARCH, IN FACT, PERFORMED?

21 A. YES.

22 Q. COULD YOU PLEASE DESCRIBE WHAT HAPPENED.

23 A. YES. WE HAVE TO GET A SUPERVISOR'S APPROVAL
24 TO DO THAT, SO ONE OF OUR SERGEANTS CAME AND WITNESSED
25 THE STRIP SEARCH, AND ALSO ANOTHER OFFICER TOOK HIM TO A
26 PRIVATE ROOM, AWAY FROM EVERYONE ELSE, AND MADE SURE
27 THERE WAS NO CONTRABAND IN THERE AT ALL, AND ORDERED HIM
28 TO TAKE OFF HIS CLOTHES.

1 Q. DID YOU OBSERVE ANYTHING WHEN THE DEFENDANT
2 BEGAN REMOVING HIS CLOTHES?

3 A. OFFICER MASSEY OBSERVED A SMALL PIECE OF
4 COCAINE FALL FROM MR. ELMORE'S PANTS.

5 Q. COULD YOU PLEASE SPELL OFFICER MASSEY'S NAME
6 FOR THE COURT REPORTER.

7 A. SURE. IT'S M-A-S-S-E-Y.

8 Q. OFFICER MASSEY OBSERVED A SUBSTANCE FALL FROM
9 THE DEFENDANT'S PERSON?

10 A. YES, MA'AM.

11 Q. DID HE INFORM YOU OF THAT?

12 A. HE DID.

13 Q. DID YOU RECOVER THAT ITEM?

14 A. YES, I DID.

15 Q. BASED OFF YOUR TRAINING AND EXPERIENCE, DID
16 YOU FORM AN OPINION AS TO THE NATURE OF THE SUBSTANCE?

17 A. YES.

18 Q. AND WHAT IS THAT OPINION?

19 A. I BELIEVE THAT IT WAS COCAINE BASE.

20 Q. DID IT APPEAR TO BE CONSISTENT WITH THE
21 SUBSTANCE YOU LOCATED EARLIER IN THE BACK OF YOUR PATROL
22 VEHICLE?

23 A. YES. THEY WERE THE SAME TYPE OF CONSISTENCY.

24 MS. KARR: YOUR HONOR, AT THIS TIME, I WOULD
25 LIKE TO READ A STIPULATION INTO THE RECORD.

26 THE COURT: SURE.

27 MS. KARR: IT IS STIPULATED, FOR THE PURPOSES
28 OF THE PRELIMINARY EXAMINATION AND ANY MOTIONS ARISING

1 THEREFROM, THAT THE SUBSTANCE RECOVERED BY OFFICER
2 MINTER IN THE BACKSEAT OF HIS PATROL VEHICLE ON APRIL
3 12TH, 2008, DURING THE COURSE OF THIS INVESTIGATION, IS
4 1.43 GRAMS OF COCAINE BASE, A USABLE AMOUNT.

5 IT IS FURTHER STIPULATED, FOR THE PURPOSES OF
6 THE PRELIMINARY EXAMINATION AND ANY MOTIONS ARISING
7 THEREFROM, THAT THE SUBSTANCE RECOVERED BY OFFICER
8 MINTER DURING THE STRIP SEARCH OF THE DEFENDANT ON
9 APRIL 12, 2008, WAS .02 GRAMS OF COCAINE, ALSO A USABLE
10 AMOUNT.

11 **THE COURT:** I THINK IT WAS RECOVERED FROM THE
12 OTHER -- MASSEY RECOVERED THE .02, RIGHT?

13 **THE WITNESS:** YES.

14 **MR. THOMPSON:** YOUR HONOR, THERE IS MAYBE SOME
15 CONFUSION ABOUT WHAT I'M WILLING TO STIPULATE TO. I AM
16 WILLING TO STIPULATE THAT WHAT THEY TESTED WAS ROCK
17 COCAINE, FOR PURPOSES OF PRELIM. BUT I'M NOT
18 STIPULATING TO THE FACTS OF WHERE IT WAS FOUND AND THAT
19 KIND OF THING.

20 **THE COURT:** BASICALLY, YOU STIPULATE TO THE
21 LAB REPORT, RIGHT?

22 **MR. THOMPSON:** I WILL STIPULATE TO LAB REPORT,
23 BUT I'M NOT STIPULATING --

24 **THE COURT:** SO YOU STIPULATE TO THE LAB, AND
25 THEN YOU JUST ASK HIM THE QUESTIONS, IF HE IMPOUNDED
26 WHAT HE SAYS WAS FOUND AT THE LOCATION UNDER THAT TAG
27 NUMBER. THAT'S CLEANER FOR YOU, RIGHT, MR. THOMPSON?

28 **MR. THOMPSON:** YES, YOUR HONOR.

1 **THE COURT:** GOOD ENOUGH. GO AHEAD.

2 **BY MS. KARR:**

3 Q. AFTER YOU LOCATED THE ROCK COCAINE IN THE BACK
4 OF YOUR PATROL VEHICLE, DID YOU SUBSEQUENTLY IMPOUND
5 THAT ROCK COCAINE?

6 A. YES, MA'AM.

7 Q. AND DID YOU IMPOUND IT UNDER ITEM ONE OF
8 IMPOUND NUMBER 067747?

9 A. I BELIEVE THAT WAS THE TAG NUMBER, YES.

10 Q. AND THE ROCK COCAINE THAT OFFICER MASSEY
11 OBSERVED, WHICH YOU RECOVERED FROM THE STRIP SEARCH OF
12 THE DEFENDANT, DID YOU ALSO IMPOUND THAT SUBSTANCE?

13 A. YES, MA'AM. ITEM TWO OF THE SAME TAG.

14 Q. ITEM TWO OF THE SAME IMPOUND NUMBER?

15 A. YES, MA'AM.

16 **MS. KARR:** YOUR HONOR, JUST TO CLARIFY --

17 **THE COURT:** THE STIPULATION IS THAT, FOR THAT
18 TAG NUMBER, IF A CHEMIST WERE GOING TO COME IN AND
19 TESTIFY, THE CHEMIST WOULD TESTIFY TO THE AMOUNT STATED
20 AS A USABLE QUANTITY ON THE ONE, AND THAT'S FOR PURPOSES
21 OF PRELIMINARY EXAMINATION AND ANY MOTIONS ON THE
22 RECORD. IS THAT RIGHT, MR. THOMPSON?

23 **MR. THOMPSON:** YES, YOUR HONOR.

24 **THE COURT:** SO STIPULATED THEN?

25 **MR. THOMPSON:** SO STIPULATED.

26 **THE COURT:** NOW, THE EXPERT WOULD SAY, "USABLE
27 QUANTITY ON AMOUNT ONE." DO THEY SAY, "USABLE QUANTITY"
28 ON AMOUNT TWO?

1 MS. KARR: YES, YOUR HONOR.

2 THE COURT: OKAY, IF THAT'S WHAT THEY WOULD
3 TESTIFY TO. NEXT QUESTION.

4 MS. KARR: YOUR HONOR, AT THIS TIME, I WOULD
5 ASK THAT THE COURT TAKE JUDICIAL NOTICE OF ITS OWN FILE;
6 THAT ON APRIL 16TH, 2008, AT APPROXIMATELY 1:30 P.M., IN
7 DEPARTMENT 12, THE DEFENDANT WAS ARRAIGNED ON THIS
8 COMPLAINT, AND HE STATED THAT HIS TRUE NAME DID APPEAR
9 ON THE COMPLAINT.

10 THE COURT: THROUGH COUNSEL. I DON'T HAVE A
11 PROBLEM TAKING JUDICIAL NOTICE OF THE COURT RECORD. DO
12 YOU, MR. THOMPSON?

13 MR. THOMPSON: NO, YOUR HONOR.

14 THE COURT: GOOD ENOUGH, THEN. I WILL DO
15 THAT.

16 MS. KARR: THANK YOU. AT THIS TIME, NO
17 FURTHER QUESTIONS.

18 THE COURT: MR. THOMPSON, CROSS.

19 MR. THOMPSON: THANK YOU, YOUR HONOR.

20 THE COURT: SURE.

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q. GOOD MORNING, OFFICER MINTER.

24 A. GOOD MORNING.

25 MR. THOMPSON: THERE'S NO PODIUM IN HERE, HUH?

26 THE COURT: YOU CAN STAY SEATED. THAT'S FINE.

27 MR. THOMPSON: ALL RIGHT. THANK YOU.

28

1 **BY MR. THOMPSON:**

2 Q. WHAT TIME DID YOUR SHIFT START THAT DAY?

3 A. 6:00 IN THE MORNING.

4 Q. AND HAD YOU EVER MET MR. CROWLEY BEFORE THAT
5 DAY?

6 A. NO.

7 Q. OKAY. HAD YOU -- HAD YOU KNOWN THAT HE HAD
8 USED THE NAME RAYMOND THOMPSON IN THE PAST?

9 **MS. KARR:** OBJECTION. RELEVANCE.

10 **THE COURT:** THAT'S OKAY. DO YOU KNOW?

11 **THE WITNESS:** NO, I DO NOT.

12 **BY MR. THOMPSON:**

13 Q. HOW ABOUT -- DID HE USE THE NAME ROBERT
14 THOMPSON?

15 A. NO.

16 Q. DID YOU KNOW, AT THAT TIME, THAT HE HAD BEEN
17 CONVICTED OF PETTY THEFT?

18 A. BEFORE I CONTACTED HIM, SIR?

19 Q. YES. BEFORE YOU CONTACTED HIM.

20 A. NO.

21 Q. HOW ABOUT AT THE TIME YOU GOT TO THE STATION,
22 DID YOU KNOW THEN THAT HE HAD BEEN CONVICTED OF PETTY
23 THEFT?

24 A. I KNEW THAT HE WAS ON PAROLE FOR, I BELIEVE,
25 BURGLARY.

26 Q. OKAY. DID YOU KNOW THAT HE HAD TWO
27 CONVICTIONS FOR BURGLARY?

28 **MS. KARR:** OBJECTION, YOUR HONOR. RELEVANCE.

1 **THE COURT:** NO. THAT'S OVERRULED. I THINK
2 YOU ARE ASKING FOR HEARSAY STATEMENTS TO COME IN. I
3 THINK HE IS ENTITLED TO IMPEACH. IT'S IF HE KNOWS.
4 WERE YOU AWARE OF IT?

5 **THE WITNESS:** NO, SIR.

6 **THE COURT:** OKAY.

7 **BY MR. THOMPSON:**

8 Q. DO YOU KNOW THAT HE WAS ARRESTED LATER THAT
9 DAY FOR BEING UNDER THE INFLUENCE OF CONTROLLED
10 SUBSTANCE?

11 A. I LEARNED LATER, YES, SIR.

12 Q. AND, IN FACT, JUST THREE DAYS AGO, YOU
13 ARRESTED HIM FOR PETTY THEFT, RIGHT?

14 A. I DID.

15 Q. AND THIS IS THE MAN WHOSE WORD YOU WERE TAKING
16 FOR MR. ELMORE PUTTING CRACK ON THE SEAT, RIGHT?

17 A. YES, SIR.

18 Q. ALL RIGHT. WHAT TIME WAS IT THAT MR. JOHNSON
19 FLAGGED YOU DOWN?

20 A. I DON'T REMEMBER THE EXACT TIME. I CAN LOOK
21 AT MY REPORT, IF THAT WILL HELP, SIR.

22 Q. YEAH. IF IT WILL REFRESH YOUR RECOLLECTION,
23 LET ME KNOW.

24 A. OKAY.

25 Q. DOES THAT REFRESH YOUR RECOLLECTION?

26 A. YES, SIR. IT WAS --

27 Q. SORRY.

28 A. 9:00 IN THE MORNING, SIR.

1 Q. SO THERE WERE THREE HOURS BETWEEN THE TIME YOU
2 STARTED YOUR SHIFT AND THE TIME THAT MR. JOHNSON FLAGGED
3 YOU DOWN?

4 A. YES.

5 Q. THIS WAS ON WHAT STREET AGAIN?

6 A. 14TH.

7 Q. 14TH. SO THAT'S A NORTH/SOUTH ROAD, RIGHT?

8 A. IT IS.

9 Q. AND WHAT SIDE OF THE STREET WAS MR. JOHNSON
10 ON?

11 A. WELL, ORIGINALLY, MR. JOHNSON WAS ON K, 1400 K
12 STREET, WHICH WOULD RUN EAST/WEST; ALMOST THE
13 INTERSECTION OF 14TH AND K.

14 Q. FROM 14TH AND K, CAN YOU SEE FROM THAT POINT
15 TO WHERE THE THREE SUSPECTS WERE?

16 A. YES, SIR.

17 Q. OKAY. AND SO ON WHAT SIDE OF K WAS MR.
18 JOHNSON?

19 A. THE NORTH SIDE.

20 Q. WOULD HE HAVE BEEN ON THE NORTHWEST SIDE,
21 THEN, OF THAT INTERSECTION?

22 A. HE WOULD HAVE BEEN ON THE NORTHEAST SIDE.

23 Q. THE NORTHEAST SIDE.

24 A. BUT HE WAS ABOUT 20 YARDS AND EASTBOUND ON K.

25 Q. OKAY. AND WHAT SIDE OF 14TH WERE THESE THREE
26 SUSPECTS ON?

27 A. THE WEST SIDE.

28 Q. AND THEY WERE WALKING SOUTH?

1 A. YES, SIR.

2 Q. IS THAT SOUTH FROM K?

3 A. YES, IT IS.

4 Q. THERE ARE A BUNCH OF HOMELESS SHELTERS AND
5 THINGS LIKE THAT AROUND THERE?

6 A. THERE ARE. YES, SIR.

7 Q. DID MR. JOHNSON TELL YOU WHEN HE HAD SEEN THEM
8 SMOKING?

9 A. NO, HE DID NOT.

10 Q. YOU DIDN'T ASK?

11 A. I DID NOT.

12 Q. SO IT COULD HAVE BEEN YESTERDAY?

13 A. I DON'T KNOW.

14 Q. WHERE WERE THEY WHEN HE SAW THEM SMOKING --
15 OR, ACTUALLY, HE SAW ONE PERSON SMOKING SOMETHING,
16 RIGHT?

17 A. YES.

18 Q. WHERE WAS THIS PERSON, WHO WAS SMOKING, WHEN
19 MR. JOHNSON SAW HIM?

20 A. MR. JOHNSON TOLD ME IT WAS RIGHT AT THE SAME
21 AREA, AT 1400 K.

22 Q. AND WHERE WAS MR. JOHNSON WHEN HE SAW THE
23 PERSON SMOKING?

24 A. I DIDN'T ASK EXACTLY WHERE HE WAS.

25 Q. HAVE YOU EVER MET MR. JOHNSON BEFORE THAT DAY?

26 A. NO.

27 Q. WHEN YOU GOT THESE THREE FOLKS' ATTENTION, YOU
28 WERE IN YOUR POLICE CAR, RIGHT?

1 A. I DROVE UP IN MY CAR. YES, SIR.

2 Q. IT IS A MARKED POLICE CAR?

3 A. IT IS.

4 Q. AND YOU WERE DRESSED AS YOU ARE TODAY, IN FULL
5 UNIFORM?

6 A. YES, SIR.

7 Q. WAS THERE ANYONE ELSE WITH YOU IN YOUR CAR?

8 A. NO, SIR.

9 Q. WHEN YOU DROVE UP TO THEM, THEY WOULD HAVE
10 BEEN ON YOUR RIGHT-HAND SIDE?

11 A. YES.

12 Q. YOU ROLLED DOWN YOUR PASSENGER SIDE WINDOW?

13 A. NO. I GOT OUT OF THE CAR TO CONTACT THEM.

14 Q. SO YOU STOPPED NEAR THEM?

15 A. YES, I DID.

16 Q. DESCRIBE THAT TO ME, IF YOU WOULD.

17 A. SURE. I PULLED UP. THEY WERE WALKING
18 SOUTHBOUND ON THE SIDEWALK. I PULLED IN AT A SLIGHT
19 ANGLE ON THE STREET, GOT OUT, AND WALKED TOWARDS THE
20 FRONT OF MY CAR, AND THEN I CONTACTED THEM THERE.

21 Q. SO WHEN YOU PULLED TO THE RIGHT SIDE, THIS
22 WOULD BE ON THE WEST SIDE OF 14TH, RIGHT?

23 A. YES, SIR.

24 Q. WHEN YOU PULLED IN AT AN ANGLE ON THE RIGHT
25 SIDE OF 14TH, DID YOU HAVE THE LIGHTS ON YOUR CAR GOING?

26 A. NO.

27 Q. ANY EMERGENCY FLASHERS GOING?

28 A. NO.

1 Q. BLINKERS GOING?

2 A. NO.

3 Q. WAS THERE ANY TRAFFIC AROUND THERE AT THAT
4 TIME?

5 A. I DON'T REMEMBER THAT, NO.

6 Q. WHEN YOU PULLED IN AT AN ANGLE LIKE THAT, WERE
7 YOU JUST TO THE SOUTH OF THEM OR EQUAL TO THEM?

8 A. JUST A LITTLE BIT TO THE NORTH.

9 Q. JUST A LITTLE BIT TO THE NORTH?

10 A. YES, SIR.

11 Q. YOU WOULD HAVE BEEN BEHIND THEM?

12 A. YES.

13 Q. WHEN YOU PULLED YOUR CAR IN IN THAT MANNER,
14 DID ANY OF THE THREE TURN AROUND AND LOOK AT YOU?

15 A. I BELIEVE ALL THREE OF THEM DID.

16 Q. SO WHEN YOU PULLED IN, DID YOUR CAR MAKE SOME
17 NOISE THAT A CAR HAD JUST COME TO A STOP THERE?

18 A. I DON'T REMEMBER.

19 Q. WOULD IT HAVE BEEN A PRETTY ABRUPT STOP?

20 A. I DIDN'T SLAM ON THE BRAKES OR ANYTHING LIKE
21 THAT. I PULLED UP AND PUT IT IN PARK AND GOT OUT.

22 Q. DID YOU GET OUT -- WHEN YOU GOT OUT OF YOUR
23 CAR, DID YOU TURN OFF THE IGNITION?

24 A. I DON'T REMEMBER.

25 Q. SO YOU GET OUT OF YOUR CAR, AND YOU WALK RIGHT
26 OUT TO THE SIDEWALK, RIGHT?

27 A. YES.

28 Q. AS YOU WERE WALKING OVER THERE, WERE YOU

1 SAYING SOMETHING LIKE, "HEY, CAN I TALK TO YOU?"

2 A. EXACTLY.

3 Q. YOU REMEMBER THE WORDS YOU USED?

4 A. IT WAS SOMETHING LIKE -- I DON'T REMEMBER
5 EXACTLY THE WORDS, BUT IT WAS SOMETHING LIKE, "HEY, CAN
6 I TALK TO YOU?"

7 Q. WHAT WAS YOUR TONE OF VOICE AT THAT POINT?

8 A. A LITTLE BIT LOUDER THAN WE ARE TALKING NOW.

9 Q. OKAY. AND NONE OF THEM TRIED TO RUN AWAY,
10 RIGHT?

11 A. NO, SIR.

12 Q. AND NOBODY WAS SHIFTING THEIR HANDS AROUND IN
13 THEIR POCKETS OR ANYTHING LIKE THAT, RIGHT?

14 A. NO.

15 Q. MR. ELMORE IS NOT REACHING IN THE BACK OF HIS
16 PANTS OR ANYTHING, RIGHT?

17 A. NO. MR. ELMORE SAT ON THE SIDEWALK.

18 Q. HE SAT ON THE SIDEWALK?

19 A. YES, SIR.

20 Q. IS THAT WHAT YOU TOLD HIM TO DO?

21 A. I THINK I DID.

22 Q. AND THIS IS BEFORE YOU GOT A LOOK AT HIS EYES,
23 RIGHT?

24 A. YES, SIR.

25 Q. DID YOU TELL EACH OF THEM TO SIT?

26 A. I DID.

27 Q. WERE THEY SITTING UP? DID YOU HAVE THEM
28 SITTING UP AGAINST THE BUILDING?

1 A. I HAD -- MR. ELMORE SAT ON THE SIDEWALK; MR.
2 CROWLEY SAT ON THE CURB. AND THERE WAS A FEMALE WITH
3 THEM, I BELIEVE HER LAST NAME WAS MOORE, AND SHE LEANED
4 UP AGAINST THE PUSH BUMPER OF MY PATROL VEHICLE.

5 I WAS BY MYSELF AT THE TIME. FOR MY SAFETY, I
6 FELT MORE COMFORTABLE IF THEY WERE ALL STATIONARY, I
7 GUESS.

8 Q. DID YOU HAVE ANY OF THEM CUFFED AT THAT POINT?

9 A. NO.

10 Q. WHEN YOU ASKED IF ANY OF THEM WERE ON
11 PROBATION OR PAROLE, MR. ELMORE DIDN'T ANSWER; IS THAT
12 RIGHT?

13 A. NO. HE TOLD ME HE WAS NOT.

14 Q. HE TOLD YOU HE WAS NOT?

15 A. YES, SIR.

16 Q. AND THE FEMALE, SONYA MOORE, TOLD YOU SHE WAS
17 ON PROBATION?

18 A. YES, SIR.

19 Q. FOR DRUGS?

20 A. YES.

21 Q. AND THE OTHER GENTLEMAN, MR. CROWLEY, TOLD YOU
22 HE WAS ON PAROLE?

23 A. YES, SIR.

24 Q. DID YOU CUFF EITHER OF THEM AT THAT POINT?

25 A. I ENDED UP CUFFING MR. CROWLEY, BUT I BELIEVE
26 I WAITED FOR A COVER UNIT TO COME, SO IT MAY HAVE BEEN A
27 MINUTE OR TWO.

28 Q. WHILE MR. ELMORE WAS -- JUST SO I CAN HAVE A

1 VISUAL HERE --

2 A. SURE.

3 Q. ARE YOU A GOOD ARTIST AT ALL?

4 A. NO. BUT I WILL DO MY BEST.

5 Q. WHY DON'T YOU JUST SHOW US THE AREA AND PUT A
6 1, 2, 3 FOR WHERE THEY WERE SEATED OR STANDING, WHERE
7 YOUR CAR WAS, THE ANGLING, AND THAT KIND OF THING.

8 A. YOU DON'T NEED TO SEE K STREET ANYMORE, DO
9 YOU?

10 Q. NO.

11 A. SO IF THIS IS 14TH STREET, THIS IS MY VEHICLE
12 HERE (INDICATING). AND WHICH NUMBER WOULD YOU LIKE FOR
13 WHO?

14 Q. WHO IS THE FIRST ONE THAT SAID ANYTHING TO
15 YOU, ASIDE FROM MR. JOHNSON?

16 A. I BELIEVE MR. CROWLEY.

17 Q. LET'S USE MR. CROWLEY AS NUMBER 1.

18 A. NUMBER 1 IS HERE, ON THE CURB (INDICATING).

19 Q. SECOND ONE WHO SAID ANYTHING TO YOU?

20 A. I BELIEVE MS. MOORE.

21 Q. SO MS. MOORE IS NUMBER 2.

22 A. ON THE PUSH BUMPER HERE. AND MR. ELMORE IS
23 HERE, NUMBER 3, ON THE CURB, SITTING (INDICATING).

24 Q. ALL RIGHT. NOW, AND --

25 A. AND THIS WOULD BE NORTHBOUND.

26 Q. THANK YOU. AND, OF COURSE, WHERE YOU ARE
27 SHOWING NUMBER 2 FOR MS. MOORE, THAT IS YOUR FRONT
28 BUMPER, CORRECT?

1 A. YES.

2 Q. ALL RIGHT. PUT A LITTLE -- THANK YOU. YOU
3 CAN RESUME YOUR SEAT. NOW, WHEN YOU GOT OUT OF YOUR
4 CAR, THEY WERE STILL WALKING, CORRECT?

5 A. YES, THEY WERE.

6 Q. AND SO THEY WOULDN'T HAVE BEEN IN THE POSITION
7 THAT YOU HAVE SHOWN ON THE DIAGRAM, RIGHT?

8 A. NO. THEY WERE A LITTLE MORE NORTHBOUND WHEN I
9 ORIGINALLY PULLED UP.

10 Q. ALL RIGHT. AND YOU DETAINED THE ENTIRE GROUP
11 AT THAT POINT, RIGHT?

12 A. I DID.

13 Q. DID YOU CALL FOR BACKUP AT SOME POINT?

14 A. I DID.

15 Q. WAS THAT BEFORE YOU DETAINED THEM?

16 A. AFTER.

17 Q. HOW MUCH AFTER?

18 A. ABOUT A MINUTE. WHEN I REALIZED THAT MR.
19 CROWLEY WAS ON PAROLE AND MS. MOORE WAS ON PROBATION, I
20 KNEW I WAS GOING TO BE ABLE TO DO A SEARCH. THAT'S WHEN
21 I ASKED FOR AN ADDITIONAL UNIT TO COME ASSIST ME.

22 Q. ALL RIGHT. SO IF YOU CAN TELL US -- READING
23 YOUR REPORT, IT'S NOT REAL EASY FOR ME TO FIGURE OUT THE
24 ORDER OF THINGS.

25 A. OKAY.

26 Q. WHOSE INFORMATION, IDENTIFICATION, AND THAT
27 KIND OF THING, DID YOU GET FIRST?

28 A. FROM WHAT I CAN REMEMBER, MR. CROWLEY, BECAUSE

1 HE TOLD ME HE WAS ON PAROLE; AND THEN MS. MOORE'S AND
2 THEN MR. ELMORE'S IDENTITY.

3 Q. SO THE INTERCHANGE BETWEEN YOU AND MR.
4 CROWLEY --

5 A. YES, SIR.

6 Q. -- HOW LONG WOULD YOU SAY THAT TOOK? WE'RE
7 GOING A PIECE AT A TIME HERE.

8 A. OKAY.

9 Q. SO GETTING HIS IDENTIFICATION, INFORMATION,
10 THAT KIND OF THING, HOW LONG DID THAT TAKE?

11 A. HE WAS STILL SEATED ON THE CURB WHEN I WAS
12 GETTING HIS INFORMATION, PROBABLY 30 SECONDS. AND THEN
13 GETTING MS. MOORE'S INFORMATION, AND THE WILLIE TONY
14 NAME THAT MR. ELMORE GAVE ME WAS MAYBE ANOTHER TWO
15 MINUTES. THE OTHER OFFICER CAME AND ASSISTED AND
16 WATCHED THEM.

17 Q. WHO WAS THAT OFFICER, BY THE WAY?

18 A. OFFICER MATTLEY. I THINK IT'S M-A-T-T-L-E-Y.

19 Q. WAS HE THE ONLY -- A MALE OFFICER? → her

20 A. YES, MALE. YES, SIR. ←

21 Q. WAS HE THE ONLY OTHER OFFICER THAT CAME TO
22 THAT SCENE ON 14TH? (HER)

23 A. YES.

24 Q. ALL RIGHT. SO YOU GET MR. CROWLEY'S
25 IDENTIFICATION. DID HE HAVE AN I.D. CARD OR SOMETHING
26 WITH HIM ?

27 MS. KARR: YOUR HONOR, I WILL OBJECT AS TO
28 RELEVANCE. THERE IS NO PENDING 1538 MOTION HERE.

1 **MR. THOMPSON:** THESE DON'T GO TO 1538 MOTIONS.
2 THESE GO TO THE OPPORTUNITY --

3 **THE COURT:** SUSTAINED. NEXT QUESTION.

4 **BY MR. THOMPSON:**

5 Q. DID YOU HAVE YOUR EYES ON ALL THREE OF THEM
6 THE ENTIRE TIME THAT YOU WERE AT THE SCENE ON 14TH
7 STREET?

8 A. NO.

9 Q. WERE YOU IN YOUR POLICE CAR AT SOME POINT?

10 A. IN AND OUT, YES, SIR.

11 Q. WERE MR. CROWLEY AND MR. ELMORE CLOSE ENOUGH
12 TO BE ABLE TO HAND SOMETHING, ONE TO THE OTHER?

13 A. AT WHAT POINT?

14 Q. WHILE THEY WERE IN THE POSITION YOU HAVE ON
15 THE DIAGRAM HERE.

16 A. NO. I DON'T THINK SO.

17 Q. OKAY. AND AT SOME POINT -- YOU CUFFED MR.
18 CROWLEY FIRST; IS THAT RIGHT?

19 A. YES, SIR.

20 Q. AND YOU PUT HIM IN THE DRIVER'S SIDE, REAR
21 SEAT, RIGHT?

22 A. I CUFFED HIM. I DID A QUICK SEARCH, LOCATED A
23 PIPE, AND PUT HIM IN MY VEHICLE.

24 Q. OKAY. AND THEN YOU CUFFED -- OR YOU LET MS.
25 MOORE GO AT SOME POINT, RIGHT?

26 A. EVENTUALLY, YES, SIR.

27 Q. YOU SEARCHED HER, AND THEN LET HER GO?

28 A. I WAS ABLE TO CONFIRM HER IDENTITY ON THE

1 COMPUTER. SHE HAD NO WARRANTS. I DID THE BEST SEARCH I
2 COULD AND LET HER GO. YES, SIR.

3 Q. AND THEN YOU HANDCUFFED MR. CROWLEY, RIGHT?

4 A. NO. I HAD ORIGINALLY --

5 Q. I'M SORRY. MR. ELMORE?

6 A. EVENTUALLY, YES, SIR, I DID.

7 Q. WAS THAT AFTER YOU LET MS. MOORE GO OR BEFORE?

8 A. I CAN'T REMEMBER. I'M SORRY.

9 Q. WHILE YOU CUFFED HIM, YOU DID A PAT-DOWN
10 SEARCH?

11 A. YES.

12 Q. DID YOU SEARCH HIM FOR NARCOTICS AT THAT
13 POINT?

14 A. I DID.

15 Q. THAT WAS BECAUSE MR. CROWLEY HAD TOLD YOU THAT
16 HE HAD SOME?

17 A. YES.

18 Q. SO ALREADY, AT THE SCENE, MR. CROWLEY HAD TOLD
19 YOU, "THAT GUY HAS GOT ROCK IN HIS BUTT CHEEKS"?

20 A. YES. I DID THE BEST SEARCH OF HIS BUTT CHEEKS
21 I COULD AT THE SCENE.

22 Q. DID YOU FIND A PIPE ON HIM?

23 A. NO, I DID NOT -- ON MR. ELMORE?

24 Q. MR. ELMORE.

25 A. NO, SIR.

26 Q. OKAY. DID -- MR. JOHNSON HAD TOLD YOU THAT HE
27 SAW THE GUY, WHO APPEARED TO BE MR. ELMORE, SMOKING A
28 PIPE, RIGHT?

1 A. YES, HE DID.

2 Q. DID THE FACT THAT YOU DIDN'T FIND A PIPE ON
3 HIM HAVE ANY SIGNIFICANCE TO YOU?

4 A. NOT AT THAT POINT, NO.

5 Q. YOU PUT MR. ELMORE IN THE PASSENGER SEAT OF
6 THE BACK OF YOUR PATROL CAR, RIGHT?

7 A. YES.

8 Q. CUFFED BEHIND HIS BACK?

9 A. HE WAS.

10 Q. MR. CROWLEY IS ALSO CUFFED BEHIND HIS BACK?

11 A. YES, SIR.

12 Q. WHEN YOU PUT THE TWO OF THEM IN THE CAR, WHAT
13 DID YOU DO IMMEDIATELY NEXT?

14 A. DROVE TO HEADQUARTERS.

15 Q. YOU GOT RIGHT IN THE DRIVER'S SEAT AND DROVE
16 TO HEADQUARTERS?

17 A. I MIGHT HAVE TALKED TO OFFICER MATTLEY FOR A
18 FEW SECONDS, BUT --

19 Q. WHILE YOU WERE TALKING WITH OFFICER MATTLEY,
20 WOULD YOU HAVE BEEN WATCHING THE TWO OF THEM IN YOUR
21 BACKSEAT?

22 A. NO.

23 Q. DO YOU HAVE AUDIO RECORDING DEVICES IN YOUR
24 CAR?

25 A. I DO NOT.

26 Q. YOU TOLD US THAT YOU SUSPECTED THAT HE, MR.
27 ELMORE, MIGHT HAVE BEEN UNDER THE INFLUENCE OF A
28 NARCOTIC; IS THAT RIGHT?

1 A. I DID.

2 Q. THAT'S PART OF THE REASON YOU ARRESTED HIM?

3 A. THAT'S PART. YES, SIR.

4 Q. DID YOU CHECK HIS PULSE?

5 A. I DID NOT.

6 Q. DID YOU EXAMINE HIS TONGUE?

7 A. NO.

8 Q. DID YOU NOTICE BAD BREATH?

9 A. I DID NOT.

10 Q. DID YOU NOTICE ANY BODY ODOR?

11 A. I DON'T RECALL THAT, NO.

12 Q. DID YOU NOTICE BRITTLE FINGERNAILS?

13 A. I DON'T RECALL.

14 Q. DID YOU DO A ROMBERG TEST ON HIM?

15 A. NO, SIR.

16 Q. DO YOU KNOW WHAT A ROMBERG TEST IS?

17 A. YES, SIR.

18 Q. WHAT IS THAT?

19 A. THAT'S WHERE THEY STAND STILL AND HOLD THEIR
20 LEG, IF I RECALL CORRECTLY. IT'S TO SEE IF THEY HAVE A
21 STEADY GATE.

22 Q. AND THEN THERE IS ALSO A 30-SECOND ELEMENT TO
23 THAT TEST, ISN'T THERE?

24 A. THERE IS.

25 Q. THAT'S TO CHECK HOW THEIR BODY CLOCK IS
26 WORKING, RIGHT?

27 A. YES.

28 MS. KARR: OBJECTION, YOUR HONOR. RELEVANCE.

1 THE COURT: NO. THAT'S OVERRULED. NEXT.

2 BY MR. THOMPSON:

3 Q. YOU DIDN'T DO THE 30-SECOND TEST, RIGHT?

4 A. I DID NOT.

5 Q. SO YOUR ONLY EVALUATION OF HIM BEING UNDER THE
6 INFLUENCE WOULD HAVE BEEN HIS DILATED PUPILS; IS THAT
7 RIGHT?

8 A. THE DILATED PUPILS, THE SWEATING, AND THE
9 SLURRED SPEECH, SIR.

10 Q. THE QUESTIONS YOU ASKED HIM ABOUT HIS NAME,
11 WITH RESPECT TO THE 148.9, HOW MANY TIMES AT THE SCENE
12 DID YOU ASK HIM HIS NAME?

13 A. AT LEAST THREE, FROM WHAT I CAN REMEMBER.

14 Q. YOU JUST DIDN'T BELIEVE HIS NAME WAS WILLIE
15 TONY?

16 A. EXACTLY.

17 Q. AND, EACH TIME, HE REPEATED THE NAME, WILLIE
18 TONY?

19 A. YES, SIR.

20 Q. AND YOU COULD UNDERSTAND THAT, RIGHT?

21 A. YES.

22 Q. HIS DATE OF BIRTH THAT HE GAVE, 10/2/54?

23 A. I BELIEVE IT WAS THAT, YES, SIR.

24 Q. AND HE GAVE THAT SAME DATE OF BIRTH EACH TIME?

25 A. HE DID.

26 Q. WHILE YOU WERE DOING THAT EVALUATION OF HIM
27 FOR BEING UNDER THE INFLUENCE, WHERE WAS MR. CROWLEY?

28 A. HE WAS IN THE BACK OF MY POLICE CAR.

1 Q. HOW LONG DID YOUR EVALUATION TAKE?

2 A. IT WAS A VERY QUICK EVALUATION. SECONDS.

3 Q. SECONDS?

4 A. JUST ME LOOKING AT HIM. YES, SIR.

5 Q. OKAY. AND YOU HAD ALREADY SEARCHED HIM AND
6 NOT DISCOVERED THE PIPE BY THAT POINT; IS THAT RIGHT?

7 A. NO. I HAD DONE THE VERY QUICK EVALUATION OF
8 HIM AFTER MR. CROWLEY TOLD ME THAT THERE WAS COCAINE IN
9 HIS BUTT CHEEKS.

10 Q. AND YOU ARE CERTAIN THAT THE EVALUATION
11 OCCURRED AFTER MR. CROWLEY TOLD YOU THAT --

12 A. YES. I'M SURE.

13 Q. DID MS. MOORE MAKE ANY STATEMENTS TO YOU ABOUT
14 MR. ELMORE HAVING ANY DRUGS ON HIS PERSON?

15 A. NO, SIR.

16 Q. DID YOU ASK HER ANY QUESTIONS WITH RESPECT TO
17 THAT, HIM HAVING DRUGS ON HIS PERSON?

18 A. NO, I DID NOT.

19 Q. COULD YOU ESTIMATE FOR US THE AMOUNT OF TIME
20 THAT MR. CROWLEY WAS IN THE BACKSEAT OF YOUR POLICE CAR
21 BY HIMSELF.

22 A. FIVE MINUTES.

23 Q. AND DURING THAT FIVE MINUTES, YOU WEREN'T
24 WATCHING HIM, RIGHT?

25 A. I WAS NOT.

26 Q. AND THIS IS STILL BEFORE 10:00 A.M., RIGHT?

27 A. IT IS. YES, SIR.

28 Q. THE SEARCH YOU DID OF MR. ELMORE ON 14TH,

1 SPECIFICALLY WITH RESPECT TO HIS HIND END, CAN YOU
2 DESCRIBE WHAT YOU DID.

3 A. YES. I HAD HIM SPREAD HIS LEGS. AND, WITH A
4 HAND LIKE THIS (INDICATING), GO UP AND CHECK, I GUESS,
5 THE INSIDE OF HIS THIGH AND, AS BEST I COULD, HIS
6 BUTTOCKS CHEEKS.

7 Q. WHAT WE WOULD CALL THE BUTT CRACK?

8 A. YES, SIR.

9 Q. IS THAT IT?

10 A. YES. THAT'S IT.

11 Q. OKAY. AND YOU HAVE BEEN TRAINED TO DO THAT,
12 TO LOOK FOR NARCOTICS THAT ARE SECRETED IN THAT AREA OF
13 THE BODY; IS THAT RIGHT?

14 A. YES, SIR. IT'S COMMON FOR SOME REASON.

15 Q. IT'S APPARENTLY A GOOD HIDING PLACE, RIGHT?

16 A. YES, SIR.

17 Q. WHAT KIND OF PANTS WAS HE WEARING?

18 A. SWEAT PANTS.

19 Q. DID YOU, AT SOME POINT, FIND A WALLET ON HIM?

20 A. I DID.

21 Q. WHERE WAS THAT WALLET?

22 A. THAT WAS ON HIS LEFT SIDE, BETWEEN HIS BODY
23 AND THE ELASTIC OF THE SWEAT PANTS. I GUESS THE BAND
24 WAS KIND OF HOLDING IT AGAINST HIS BODY.

25 Q. WERE THESE SWEAT PANTS TIGHT ON HIS WAIST, OR
26 MODERATELY TIGHT?

27 A. THEY WERE LOOSE, BUT TIGHT ENOUGH TO HOLD HIS
28 WALLET IN, BUT SORT OF LOOSE-FITTING SWEAT PANTS.

1 Q. DO YOU KNOW WHAT KIND OF UNDERWEAR HE HAD ON,
2 IF ANY?

3 A. I DON'T REMEMBER.

4 Q. THE WALLET -- YOU KNOW HOW SOME GUYS WILL HAVE
5 EVERYTHING UNDER THE SUN IN THEIR WALLET, AND THEY CAN
6 BASICALLY CRAM IT SHUT, THAT KIND OF A SITUATION?

7 A. YES, SIR.

8 Q. HOW WOULD YOU DESCRIBE THAT WALLET WITH REGARD
9 TO WHETHER IT WAS STUFFED WITH STUFF OR NOT-SO-STUFFED?

10 A. IT WAS STUFFED WITH THE MONEY. IT WAS A
11 BROWN, LEATHER WALLET, TRI-FOLD TYPE OF WALLET. AND IT
12 WAS ABLE TO ALMOST BE CLOSED, BUT STILL, LIKE YOU SAID,
13 KIND OF OVERFLOWING A LITTLE BIT WITH THE MONEY.

14 Q. AND YOU TOOK THAT FROM HIS PERSON, RIGHT?

15 A. I DID.

16 Q. HE NEVER GOT HIS HANDS BACK ON THAT WALLET,
17 RIGHT?

18 A. NO.

19 Q. ALL RIGHT.

20 A. WELL, MAYBE THE WALLET. I DON'T RECALL IF I
21 -- ACTUALLY, I DID. I PUT IT IN HIS PROPERTY BAG. I
22 DON'T THINK HE HAS IT YET.

23 Q. FROM THE TIME THAT HE WAS TAKEN TO --
24 EVENTUALLY TAKEN TO CENTRAL JAIL, RIGHT?

25 A. HE WAS.

26 Q. FROM THE TIME YOU DETAINED HIM AND TOOK HIS
27 WALLET TO THE TIME YOU TOOK HIM TO CENTRAL JAIL, HE
28 DIDN'T GET HIS HANDS ON HIS WALLET, RIGHT?

1 MS. KARR: OBJECTION, YOUR HONOR. RELEVANCE.

2 MR. THOMPSON: I'M JUST TRYING TO SHOW THE
3 LACK OF OPPORTUNITY TO GET ANY CRACK OUT OF ANY WALLET,
4 YOUR HONOR.

5 THE COURT: OKAY. BUT YOU GOT IN WHEN HE
6 SEPARATED IT. AND SO IT'S SUSTAINED.

7 MR. THOMPSON: OKAY.

8 BY MR. THOMPSON:

9 Q. THE DISTANCE BETWEEN THE SCENE THERE AT 14TH
10 AND THE POLICE DEPARTMENT IS HOW FAR?

11 A. OUR POLICE STATION IS RIGHT AT THE CORNER OF
12 14TH AND BROADWAY. IT'S MAYBE A QUARTER MILE.

13 Q. AND, DURING THAT TRIP, YOU HAD BOTH MR.
14 CROWLEY AND MR. ELMORE IN THE CAR?

15 A. YES, I DID.

16 Q. WERE YOU OCCASIONALLY LOOKING IN THE REARVIEW
17 MIRROR AT THEM?

18 A. YES.

19 Q. ARE THEY TALKING TO EACH OTHER, ANYTHING LIKE
20 THAT?

21 A. I DON'T REMEMBER HEARING ANYTHING.

22 Q. OKAY. AND THEY ARE IN HANDCUFFS, BOTH, BEHIND
23 THEIR BACKS, RIGHT?

24 A. YES, SIR.

25 Q. CAN YOU TELL US -- YOU KNOW, MOST OF US SEE --
26 AND SOME OF US MAY HAVE EXPERIENCED -- BEING HANDCUFFED
27 IN THE BACK OF POLICE CARS; IT'S NOT THE MOST
28 COMFORTABLE POSITION TO BE IN.

1 A. IT'S NOT.

2 Q. LET'S TALK ABOUT MR. CROWLEY'S BODY. WAS HE
3 TILTED TO ONE SIDE OR ANOTHER?

4 A. I DON'T REMEMBER.

5 Q. HOW ABOUT MR. ELMORE?

6 A. I DON'T REMEMBER.

7 Q. IS IT USUALLY THE CASE THAT A PRISONER IN YOUR
8 PATROL CAR IS GOING TO BE TILTED TO ONE SIDE OR ANOTHER?

9 MS. KARR: OBJECTION, YOUR HONOR.
10 SPECULATION. RELEVANCE.

11 THE COURT: IT WOULD BE HIS EXPERIENCE. DO
12 YOU NOTICE THAT THEY TILT?

13 THE WITNESS: EVERYBODY IS DIFFERENT. SOME
14 PEOPLE LAY ON THE BOTTOM, AND SOME PEOPLE STAY STILL THE
15 ENTIRE TIME.

16 BY MR. THOMPSON:

17 Q. MR. ELMORE WASN'T LAYING DOWN, WAS HE?

18 A. NO, SIR.

19 Q. NEITHER WAS MR. CROWLEY?

20 A. NO, SIR.

21 Q. YOU DIDN'T SEE MR. ELMORE FIDGETING AROUND IN
22 HIS SEAT, RIGHT?

23 A. NOT WHILE WE WERE DRIVING, NO.

24 Q. OH, THE SEATBELTS. WHY WEREN'T THEY IN
25 SEATBELTS?

26 A. I DIDN'T SEE THE NEED. BASED ON MY SAFETY AND
27 WHAT OTHER OFFICERS DO AND THE WAY I WAS TRAINED, NOBODY
28 GETS SEAT BELTED. YOU WOULD HAVE TO LEAN OVER SOMEBODY

1 TO PUT THEIR SEATBELT ON.

2 Q. AND THAT WOULD BE A DANGER TO YOU?

3 A. YES, SIR.

4 Q. WHAT ARE THE SEATBELTS IN THERE FOR?

5 A. FOR THEIR SAFETY. BUT, LIKE I SAID, BASED ON
6 THE WAY I WAS TRAINED AND THE SAFETY FOR ME, I DON'T
7 SEATBELT PEOPLE.

8 Q. HAVE YOU EVER DRIVEN ANOTHER POLICE CAR IN
9 YOUR DEPARTMENT?

10 MS. KARR: OBJECTION, YOUR HONOR. RELEVANCE.

11 MR. THOMPSON: YOUR HONOR, I KNOW I'M GOING
12 LONGER THAN PEOPLE MIGHT EXPECT. BUT THIS IS AN ISSUE
13 OF HOW THE DOPE GOT HERE. I THINK I HAVE LEEWAY HERE.

14 THE COURT: WELL -- THE REASON WHY THE BELTS
15 ARE THERE --

16 MR. THOMPSON: IT'S FOUNDATIONAL.

17 THE COURT: -- THAT WAS OBJECT-ABLE. HAVE YOU
18 DRIVEN OTHER CARS?

19 THE WITNESS: I HAVE.

20 THE COURT: NEXT.

21 BY MR. THOMPSON:

22 Q. DO ANY OTHER POLICE CARS, IN THE REAR SEAT,
23 NOT HAVE SEATBELTS?

24 A. YES.

25 MS. KARR: OBJECTION, YOUR HONOR. RELEVANCE.
26 MOVE TO STRIKE.

27 THE COURT: WELL, IT IS NOT RELEVANT, BUT THE
28 ANSWER WILL STAND. SOME OF THEM DON'T HAVE IT?

1 THE WITNESS: K-NINE UNITS.

2 BY MR. THOMPSON:

3 Q. K-NINE UNITS?

4 A. YES, SIR.

5 Q. ARE THEY THE ONLY ONES?

6 A. THAT I CAN THINK OF, YES.

7 Q. WHEN YOU GOT TO HEADQUARTERS, YOU GO DOWN TO
8 THE SALLY PORT, RIGHT?

9 A. YES.

10 Q. THAT'S BELOW GROUND LEVEL?

11 A. IT IS.

12 Q. IT'S A SECURE AREA?

13 A. IT IS.

14 Q. YOU HAVE TO GET PERMITTED INTO THE GATED SALLY
15 PORT AREA, RIGHT?

16 A. YES. ↓ ↓

17 Q. ARE THERE VIDEO CAMERAS DOWN THERE?

18 A. THERE ARE. ← ↓

19 Q. AND THAT'S FOR EVERYBODY'S PROTECTION, RIGHT?

20 A. YES, SIR.

21 Q. AND THEN YOU PULLED UP TO AN AREA THAT IS NEAR
22 ROOM 138, CORRECT?

23 A. YES. ← *NEED Video Footage of that area.*

24 Q. WHEN YOU PULLED UP THERE, BOTH GENTLEMEN ARE
25 STILL IN THE BACK OF YOUR CAR, RIGHT?

26 A. THEY ARE.

27 Q. AT SOME POINT, YOU TAKE ONE OF THEM OUT,
28 RIGHT?

- 1 A. YES, SIR.
- 2 Q. WHO DO YOU TAKE OUT OF THE CAR FIRST?
- 3 A. MR. ELMORE.
- 4 Q. AND YOU PERSONALLY TOOK HIM OUT OF THAT SEAT?
- 5 A. YES, I DID.
- 6 Q. OKAY. DID YOU ALSO PERSONALLY TAKE MR.
7 CROWLEY OUT OF HIS SEAT?
- 8 A. EVENTUALLY, I DID.
- 9 Q. AFTER YOU ARRIVED AT THE POLICE STATION, AT
10 THE HEADQUARTERS, AT THE SALLY PORT, HOW LONG -- YOU
11 OBVIOUSLY GOT OUT OF THE DRIVER'S SIDE, RIGHT?
- 12 A. YES.
- 13 Q. HOW LONG AFTER THAT DID YOU TAKE MR. ELMORE
14 OUT OF HIS SEAT?
- 15 A. ALMOST IMMEDIATELY. I HAD TO SECURE MY
16 WEAPON, AND THEN I WAS INTERESTED, MAINLY, IN DOING THE
17 FINGERPRINTS TO LEARN WHO HE WAS.
- 18 Q. WHEN YOU SAY, "ALMOST IMMEDIATELY," CAN YOU
19 GIVE US AN ESTIMATE, PLEASE.
- 20 A. WITHIN THREE OR FOUR MINUTES.
- 21 Q. MEANWHILE, IS ANYONE WATCHING THE CAR?
- 22 A. OTHER OFFICERS ARE BACK AND FORTH.
- 23 Q. SO YOU SECURED YOUR WEAPON. DO YOU THEN GO
24 PUT HIS INFORMATION IN CAL. I.D.?
- 25 A. I HAVE TO TAKE HIS FINGERPRINTS FIRST.
- 26 Q. WAS HE IN THE CAR WHEN YOU TOOK HIS PRINTS? ←
- 27 A. NO.
- 28 Q. HOW LONG DID IT TAKE YOU TO TAKE THE PRINTS?

1 A. PROBABLY TEN MINUTES.

2 Q. MEANWHILE, MR. CROWLEY IS STILL IN THE CAR,
3 RIGHT?

4 A. YES, SIR.

5 Q. DO YOU CONDUCT A CAL. I.D. -- DOES THAT STAND
6 FOR "CALIFORNIA IDENTIFICATION"?

7 A. I BELIEVE IT DOES.

8 Q. IT'S A DIGITAL FINGERPRINT SYSTEM?

9 A. IT IS.

10 Q. IT IS USUALLY PRETTY RELIABLE?

11 A. YES.

12 Q. BEFORE YOU DO THAT, YOU HAVE TO TAKE OTHER
13 STEPS, THOUGH, RIGHT, TO TRY TO VERIFY SOMEONE'S
14 IDENTIFICATION?

15 A. YES, WE DO.

16 Q. WHAT SORT OF THINGS DO YOU HAVE TO DO?

17 **MS. KARR:** OBJECTION. RELEVANCE.

18 **THE COURT:** SUSTAINED.

19 **MR. THOMPSON:** YOUR HONOR, I'M SORRY. THIS
20 GOES TO ALL THE TIME THAT MR. CROWLEY HAD TO --

21 **THE COURT:** WELL, JUST ASK THE QUESTION.
22 CROWLEY WAS IN THE CAR HOW LONG?

23 **MR. THOMPSON:** I THINK I HAVE ASKED THAT.

24 **THE COURT:** WELL, THEN --

25 **MR. THOMPSON:** MAYBE I HAVEN'T ASKED IT THAT
26 WAY.

27 **BY MR. THOMPSON:**

28 Q. BEFORE YOU PULLED MR. CROWLEY OUT OF THE CAR,

1 HOW LONG HAD HE BEEN IN THERE?

2 **THE COURT:** HOW LONG HAD HE BEEN THERE ALONE?

3 **THE WITNESS:** CAN YOU REPHRASE IT?

4 **BY MR. THOMPSON:**

5 Q. JUST LIKE THE JUDGE SAID.

6 **THE COURT:** YOU HAVE THE TWO GUYS IN THE CAR.
7 YOU DRIVE FROM POINT " A" TO THE THE POLICE STATION,
8 RIGHT? YOU TAKE ELMORE OUT FIRST, RIGHT? BECAUSE HE
9 HASN'T IDENTIFIED HIMSELF, RIGHT?

10 **THE WITNESS:** YES.

11 **THE COURT:** AT SOME POINT, YOU LEAVE THE OTHER
12 GUY, CROWLEY, ALONE IN THE CAR, RIGHT?

13 **THE WITNESS:** YES.

14 **THE COURT:** WHILE YOU DO THE CAL. I.D. WITH
15 THIS FELLOW HERE, RIGHT?

16 **THE WITNESS:** YES.

17 **THE COURT:** HOW MUCH TIME ELAPSES FROM THE
18 TIME YOU TAKE THIS FELLOW, MR. ELMORE, OUT TO THE TIME
19 YOU GET THE OTHER GUY OUT?

20 **THE WITNESS:** ABOUT TEN MINUTES. AND THEN I
21 PUT MR. ELMORE BACK IN.

22 **BY MR. THOMPSON:**

23 Q. AT WHAT POINT DID MR. CROWLEY SAY TO YOU, "HE
24 PUT IT UNDER HIS ASS"?

25 A. I PUT -- I TOOK THE FINGERPRINTS, PUT MR.
26 ELMORE IN -- I LOOKED, MADE SURE THERE WAS NO COCAINE
27 SITTING THERE -- PUT MR. ELMORE BACK IN. AND THEN I
28 HAVE TO -- FOR THE FINGERPRINTS, I HAVE TO WALK THEM UP

1 TO THE SECOND FLOOR. THEY GET SCANNED IN.

2 I COME BACK OUT, AND MR. CROWLEY HAD ALREADY
3 FLAGGED DOWN ANOTHER OFFICER, SAYING HE HAS ASTHMA. SO
4 ANOTHER OFFICER SAT HIM OUTSIDE. SO I GO OVER O MR.
5 CROWLEY AND SAY, "WHAT'S THE PROBLEM?"

6 HE SAID, "HEY, HE TOOK IT OUT OF HIS ASS. HE
7 WAS TRYING TO GIVE IT TO ME."

8 Q. SO HE'S CLAIMING ASTHMA, AND THEN HE IS
9 TELLING YOU THIS OTHER THING?

10 A. YES, SIR.

11 Q. AND YOU MENTIONED ABOUT SEARCHING YOUR CAR.
12 SO BEFORE YOU PUT MR. ELMORE BACK IN THE CAR, YOU
13 SEARCHED IT?

14 A. YES, I DID.

15 Q. AND WAS IT AT THAT POINT THAT YOU FOUND THIS
16 LARGER ROCK?

17 A. NO.

18 Q. WHEN DID YOU FIND THE LARGER ROCK?

19 A. SO MR. CROWLEY TOLD ME THAT -- I'M SORRY. SO
20 I BRING MR. ELMORE BACK IN, PUT HIM IN THERE -- I'M
21 SORRY. I SEARCH THE CAR, PUT HIM BACK IN THERE, TAKE
22 THE PRINTS UP, COME BACK DOWN. CROWLEY WAS ALREADY
23 SEATED OUTSIDE OF THE CAR.

24 HE TELLS ME, "IT'S UNDER HIS ASS, UNDER THE
25 SEATBELT. HE TRIED TO GIVE IT TO ME." I GO TAKE MR.
26 ELMORE OUT, AND HE LEANED MORE TOWARDS ME, WITH HIS
27 HANDS FACING INSIDE THE CAR. I TAKE MR. ELMORE OUT,
28 LOOK UNDER THE SEATBELT, AND DISCOVER THE ROCK.

NEED
Video
Footage

1 Q. WELL, HOW DID MR. CROWLEY TELL YOU THAT IF HE
2 IS SITTING OUT THERE IN THE THING, COMPLAINING ABOUT
3 ASTHMA?

4 A. HE TOLD ME.

5 Q. HOW WOULD HE HAVE SEEN THAT? *NEED video*

6 A. NO --

7 MS. KARR: OBJECTION, YOUR HONOR.

8 SPECULATION. ARGUMENTATIVE.

9 THE COURT: IT'S ARGUMENTATIVE. REPHRASE THE
10 QUESTION.

11 MR. THOMPSON: ALL RIGHT.

12 BY MR. THOMPSON:

13 Q. HOW FAR AWAY FROM THE CAR WAS MR. CROWLEY WHEN
14 HE SAID THAT DO YOU?

15 A. HE TOLD ME HE SAW IT WHEN HE WAS IN THE CAR
16 WITH HIM. THAT PERIOD WHEN I WALKED THE FINGERPRINTS UP
17 AND THEY WERE TOGETHER, HE SAW IT. HE FLAGGED AN *why didn't*
18 OFFICER DOWN AND SAID HE HAS AN ASTHMA PROBLEM, AND THEY
19 TOOK HIM AND SAT HIM IN THE SEAT, OUTSIDE OF THE
20 VEHICLE.

21 SO WHEN I CAME DOWN, CROWLEY WAS ALREADY
22 OUTSIDE OF THE VEHICLE, AND HE TOLD ME, "HEY, I WAS IN
23 THE CAR. ELMORE TRIED TO GIVE ME THE COCAINE, AND IT'S
24 UNDER THE SEATBELT."

25 Q. ALL RIGHT. THE ROOM 138 ISSUE --

26 A. SIR.

27 Q. THIS OCCURRED AFTER YOU FOUND THE ROCK ON THE
28 SEAT?

to tell the other officer?
NEED video

Room # 138

1 A. YES, IT DID.

2 Q. AND, EVEN STILL, AFTER MR. CROWLEY HAD SAID,
3 "HE TRIED TO GIVE IT TO ME"?

4 A. YES.

5 Q. IT WAS YOU AND TWO OTHER OFFICERS IN ROOM 138,
6 RIGHT?

7 A. A SERGEANT AND ANOTHER OFFICER, YES, SIR.

8 Q. AND WAS MR. ELMORE STILL WEARING THE SAME
9 CLOTHING YOU DESCRIBED EARLIER?

10 A. YES.

11 Q. IS THERE ANY VIDEO SURVEILLANCE IN ROOM 138?

12 A. THERE IS NOT. NEED → DNA

13 Q. IT'S THE ROOM THAT THE D.U.I. EVALUATIONS ARE
14 DONE IN?

15 **MS. KARR:** OBJECTION, YOUR HONOR. RELEVANCE.

16 **THE COURT:** SUSTAINED.

17 **BY MR. THOMPSON:**

18 Q. HOW BIG IS THIS ROOM?

19 A. IT'S PROBABLY, MAYBE AN EIGHT-BY-EIGHT ROOM.
20 THERE IS A TOILET. IT'S A BATHROOM.

21 Q. CAN YOU DESCRIBE FOR US, AS BEST YOU CAN, THE
22 CONFIGURATION OF WHERE THE -- EACH OF THE FOUR OF YOU IS
23 STANDING?

24 A. I CAN DRAW IT. IT MIGHT HELP.

25 **MR. THOMPSON:** CAN WE HAVE TWO EXHIBIT TAGS,
26 PLEASE.

27 **THE COURT:** MARK THE ONE, 14TH STREET, AS 1,
28 FOR IDENTIFICATION. AND PREPARE A TAG, NUMBER 2, FOR

1 THE NEXT DIAGRAM.

2 (COURT'S EXHIBITS 1 AND 2, DIAGRAMS, ARE
3 MARKED FOR IDENTIFICATION.)

4 **MR. THOMPSON:** YOUR HONOR, I HAVE LABELED THE
5 NEW DRAWING AS COURT'S EXHIBIT 2. AND WHILE THE OFFICER
6 IS COMPLETING THAT, COULD I MOVE TO ADMIT COURT'S
7 EXHIBIT 1.

8 **THE COURT:** ANY OBJECTION TO THE DIAGRAM, MS.
9 KARR?

10 **MS. KARR:** NO, YOUR HONOR.

11 **THE COURT:** ONE IS ADMITTED.

12 (COURT'S EXHIBIT 1, A DIAGRAM, IS RECEIVED
13 INTO EVIDENCE.)

14 **THE WITNESS:** HOW CAN I LABEL THEM FOR YOU?

15 **BY MR. THOMPSON:**

16 Q. ON THIS ONE, LET'S DO MR. ELMORE AS NUMBER 1,
17 AND YOU AS NUMBER 2.

18 A. OKAY.

19 Q. AND SERGEANT SALAS AS NUMBER 3.

20 A. AND THEN OFFICER MASSEY --

21 Q. I GUESS HE WOULD BE NUMBER 4.

22 A. OKAY. AND THEN, FOR YOUR KNOWLEDGE, THAT'S A
23 TOILET, TRASH CAN, AND A SINK. AND IT'S NOT TO SCALE.

24 **MS. KARR:** YOUR HONOR, COULD WE LET THE RECORD
25 REFLECT THAT, WHEN HE POINTED EACH OF THOSE ITEMS OUT,
26 HE WAS POINTING TO THE BOTTOM, RIGHT-SIDE CORNER,
27 REFERRING TO THE TOILET; AND TO THE LEFT SIDE OF THE
28 IMAGE WHEN HE WAS REFERRING TO THE SINK, AND --

1 THE COURT: OKAY. GOOD ENOUGH. ALL RIGHT.
2 NEXT.

3 BY MR. THOMPSON:

4 Q. THANKS, OFFICER. YOU CAN RESUME YOUR SEAT.
5 AND WAS MR. ELMORE FACED TO THE WALL OR TO THE INTERIOR
6 OF THE ROOM?

7 A. ORIGINALLY, TO THE WALL. AND THEN -- WHICH
8 WOULD BE -- LET'S JUST SAY THE TOP IS THE NORTH WALL,
9 EVEN THOUGH IT'S NOT.

10 Q. ALL RIGHT.

11 A. IT WOULD BE FACING NORTH. AND AS HE WAS
12 TAKING OFF HIS CLOTHES, HE KIND OF TURNED TO THE LEFT.

13 Q. WHEN HE TOOK HIS PANTS DOWN, WAS HE FACING THE
14 WALL?

15 A. YES.

16 Q. AND IT WAS OFFICER MASSEY WHO SAW THE PIECE OF
17 ROCK COCAINE FALL?

18 A. YES, SIR.

19 Q. THIS IS THE .02-GRAM PIECE?

20 A. YES.

21 Q. DID YOU MATCH UP THAT PIECE WITH THE OTHER
22 PIECE, OR DID YOU ATTEMPT TO?

23 A. NO. WHEN I IMPOUNDED THEM, I LOOKED AT THEM
24 SIDE BY SIDE, BUT I DIDN'T TRY TO MATCH THEM UP.

25 Q. YOU CAN'T TELL US WHETHER OR NOT ONE CAME OFF
26 OF THE OTHER?

27 A. I PERSONALLY CAN'T, NO.

28 Q. WAS THE PIECE THAT WAS FOUND IN THE CAR

ON PAGE #13, HE SAID THE COCAINE WAS CONSISTENT
WITH THE COCAINE FOUND EARLIER IN THE PATROL
CAR.

1 CONTAINED WITHIN SOMETHING?

2 A. YES.

3 Q. WHAT WAS IT CONTAINED WITHIN?

4 A. A PLASTIC WRAP.

5 Q. LIKE, A PLASTIC ZIPLOCK, OR JUST A PIECE OF
6 PLASTIC WRAPPING?

7 A. PLASTIC WRAP. NO ZIP.

8 Q. JUST SO WE HAVE A MENTAL PICTURE, THE PIECE
9 FROM INSIDE THE CAR -- ARE YOU FAMILIAR WITH THE MARBLE,
10 GENERAL-SIZE MARBLE, THAT KIDS PLAY WITH?

11 A. YES.

12 Q. AND IS IT BIGGER OR SMALLER THAN THAT?

13 A. WHAT SIZE MARBLE? THE BIG ONES, OR THE
14 LITTLE, TINY ONES?

15 Q. THE LITTLE ONES THAT WE ALL PLAYED MARBLES
16 WITH.

17 A. A LITTLE BIGGER THAN THAT.

18 Q. THE PIECE THAT WAS .02 GRAMS WAS SIGNIFICANTLY
19 SMALLER?

20 A. YES.

21 Q. LIKE, A PIECE OF GRAVEL FROM A WALKWAY OR
22 SOMETHING?

23 A. YES. SMALL. I COULD HOLD IT IN MY
24 FINGERTIPS.

25 Q. WAS THAT PIECE, THE SECOND PIECE THAT MASSEY
26 POINTED TO, WAS THAT CONTAINED WITHIN ANYTHING?

27 A. NO, IT WAS NOT.

28 Q. JUST BARE?

1 A. YES, SIR. → D.N.A

2 Q. ALL RIGHT. AND YOU DIDN'T SEE THAT FALL OUT?

3 A. I DID NOT.

4 Q. ARE YOU STANDING ANY CLOSER TO MR. ELMORE THAN
5 OFFICER MASSEY WAS?

6 A. WE WERE ABOUT THE SAME DISTANCE. IT MAY HAVE
7 JUST BEEN THE ANGLE THAT OFFICER MASSEY WAS AT.

8 Q. WHAT WAS MASSEY DOING EARLIER THAT DAY?

9 A. JUST PATROL. HE JUST HAPPENED TO BE AT
10 HEADQUARTERS WITH A TOTALLY UNRELATED INCIDENT. NEED Video

11 Q. ALL RIGHT. HAD YOU -- BEFORE MR. ELMORE AND
12 MR. CROWLEY WERE IN THE BACK OF YOUR POLICE CAR, HAD YOU
13 HAD ANYBODY ELSE IN THERE THAT DAY?

14 A. YES.

15 Q. HOW MANY PEOPLE?

16 A. ONE.

17 Q. WHAT WAS THAT PERSON ARRESTED FOR?

18 A. IT WAS A TRANSPORT. I WASN'T ARRESTING HIM.
19 IT WAS A PAROLE ISSUE.

20 Q. THAT WAS THE ONLY OTHER PERSON IN THE CAR?

21 A. YES.

22 **MR. THOMPSON:** COULD I HAVE JUST A MOMENT,
23 YOUR HONOR. YOUR HONOR, THAT'S ALL I HAVE AT THIS
24 POINT.

25 **THE COURT:** PEOPLE, ANYTHING FURTHER?

26 **MS. KARR:** NO, YOUR HONOR. THE PEOPLE REST.

27 **THE COURT:** ALL RIGHT. OFFICER, YOU CAN HAVE
28 A SEAT. WE WILL ADMIT NUMBER 2.

1 MR. THOMPSON: YES. SO MOVED.

2 (COURT'S EXHIBIT 2, A DIAGRAM, IS RECEIVED
3 INTO EVIDENCE.)

4 MS. KARR: THE PEOPLE REST AT THIS POINT, YOUR
5 HONOR.

6 THE COURT: ANY AFFIRMATIVE EVIDENCE, MR.
7 THOMPSON.

8 MR. THOMPSON: NO, YOUR HONOR.

9 THE COURT: ARGUMENT? RESERVE AND SUBMIT?

10 MS. KARR: YES, YOUR HONOR.

11 THE COURT: MR. THOMPSON?

12 MR. THOMPSON: THERE IS JUST SOMETHING FISHY
13 ABOUT THIS. I'M GOING TO ARGUE THAT MR. CROWLEY HAD TOO
14 MUCH OF AN OPPORTUNITY AND A MOTIVE. I THINK THE
15 OFFICER'S TESTIMONY IS ALMOST CONFOUNDING AS TO HOW HE
16 EXPLAINS THE TEN MINUTES THAT MR. ELMORE WAS OUT OF THE
17 CAR AND THE TIME THAT MR. CROWLEY WAS IN THE CAR.

18 MR. CROWLEY CLEARLY HAD THE OPPORTUNITY AND
19 MOTIVE TO PUT THAT DOPE IN THERE. HE WAS THE ONE FOUND
20 WITH THE PIPE. MR. ELMORE WAS NOT. I ARGUE THAT HE
21 SHOULD NOT BE BOUND OVER ON COUNT 1. THERE IS NO
22 TESTIMONY --

23 THE COURT: COUNT 2.

24 MR. THOMPSON: THERE IS NO TESTIMONY THAT
25 .02 --

26 THE COURT: THE OLD 2, WHICH IS THE NEW 1.

27 MR. THOMPSON: I'M SORRY?

28 THE COURT: THE OLD 2 IS THE NEW COUNT 1

1 BECAUSE COUNT 1 WAS DISMISSED.

2 MR. THOMPSON: CORRECT. I'M ARGUING ABOUT THE
3 TWO DIFFERENT PIECES.

4 THE COURT: SURE.

5 MR. THOMPSON: THE LARGE PIECE THAT WAS FOUND,
6 ACCORDING TO THE OFFICER'S TESTIMONY, IN THE CAR SEAT
7 WAS TOO BIG FOR HIM TO HAVE MISSED RUNNING HIS HANDS UP
8 ALONG THE BACK SIDE OF MR. ELMORE. HE WOULD HAVE FOUND
9 THAT. I THINK THAT'S MR. CROWLEY'S DOPE.

10 AND THEN WE COME TO THE OTHER PIECE, WHICH IS
11 .02 GRAMS. I DON'T THINK THE TESTIMONY IS THAT WAS A
12 USABLE QUANTITY. I THINK HE SHOULD BE DISCHARGED FROM
13 COUNT 1.

14 THE COURT: I THINK THAT WAS PART OF THE LAB.
15 PEOPLE?

16 MS. KARR: YES, YOUR HONOR. WE BELIEVE THERE
17 IS SUFFICIENT EVIDENCE THAT COUNT 1 SHOULD BE BOUND OVER
18 FOR PURPOSES OF TRIAL. IT'S MY UNDERSTANDING THAT THERE
19 WAS A STIPULATION, WHICH INCLUDED THAT THAT .02 WAS A
20 USABLE AMOUNT.

21 THE COURT: I WILL TAKE JUDICIAL NOTICE THAT
22 THE D.E.A. CALLS A USABLE QUANTITY .05, WHICH IS,
23 BASICALLY, WHAT YOU WILL ARGUE, RIGHT?

24 MR. THOMPSON: I DON'T THINK THE COURT CAN
25 TAKE JUDICIAL NOTICE OF THAT.

26 THE COURT: I CAN.

27 MR. THOMPSON: I THINK THAT'S A SUBJECT TO
28 DISPUTE.

1 **THE COURT:** THAT THEY HAVE A PUBLISHED --

2 **MR. THOMPSON:** THEY CERTAINLY HAVE A PUBLISHED
3 DOCUMENT.

4 **THE COURT:** THEIR PUBLISHED USABLE QUANTITY IS
5 .05. YOU KNOW THAT.

6 **MR. THOMPSON:** RIGHT. I'M TALKING ABOUT A
7 .02.

8 **THE COURT:** BUT THAT IS, BASICALLY, THE
9 GENESIS OF YOUR ARGUMENT, THAT IT'S NOT A USABLE
10 QUANTITY, AND YOU WOULD POINT TO THE OBJECTIVE STANDARD,
11 RIGHT?

12 **MR. THOMPSON:** RIGHT.

13 **MS. KARR:** IN REGARDS TO COCAINE BASE THAT WAS
14 FOUND IN THE OFFICER'S PATROL VEHICLE, IT'S ONLY A
15 COUPLE OF INCHES AWAY FROM THE DEFENDANT. AT THE TIME
16 HE PLACED MR. CROWLEY IN THE VEHICLE, MR. CROWLEY MADE
17 THESE VOLUNTARY STATEMENTS. AT THAT TIME, THERE WAS NO
18 EVIDENCE SHOWING THAT MR. CROWLEY EVEN KNEW THE
19 DEFENDANT WAS GOING TO BE ARRESTED, IN TERMS OF MOTIVE
20 FOR MR. CROWLEY PLACING IT IN THERE.

21 ADDITIONALLY, THE OFFICER RECEIVED A CITIZEN
22 COMPLAINT THAT IT WAS THE DEFENDANT THAT, IN FACT, HAD
23 SMOKED THE ROCK COCAINE. AND IT'S NOT UNCOMMON, IT'S
24 REASONABLE TO BELIEVE, THAT THEY COULD HAVE POSSIBLY
25 SHARED A PIPE.

26 FURTHERMORE, THERE IS NO EVIDENCE THAT THE
27 OFFICER SAW MR. CROWLEY ATTEMPT TO COME CLOSE TO THE
28 DEFENDANT IN THE BACK OF THAT PATROL VEHICLE TO PLACE

1 THAT ROCK COCAINE UNDER THE BELT BUCKLE. AND THEY WERE
2 BOTH HANDCUFFED DURING THE ENTIRE INCIDENT.

3 BASED OFF OF THIS EVIDENCE, THERE IS JUST
4 NOTHING TO INDICATE THAT IT WAS MR. CROWLEY, RATHER THAN
5 THE DEFENDANT, WHO ACTUALLY WAS FOUND WITH ROCK COCAINE
6 ON HIS PERSON LATER ON THAT SAME INCIDENT.

7 **THE COURT:** OKAY.

8 **MS. KARR:** AND, BASED OFF OF THIS, I WOULD ASK
9 THAT ALL COUNTS BE BOUND OVER FOR PURPOSES OF TRIAL.

10 **THE COURT:** WELL, ACTUALLY, THERE IS A FAIR
11 ARGUMENT TO BE MADE THAT CROWLEY PLACED THE STUFF THERE.
12 THERE IS A GOOD, COLORABLE, FAIR ARGUMENT TO THAT
13 EFFECT.

14 BUT THE QUESTION IS -- NO. YOU SUBMITTED,
15 OKAY.

16 BUT THE QUESTION IS, WOULD A PERSON OF
17 ORDINARY CAUTION OR PRUDENCE CONSCIENTIOUSLY ENTERTAIN A
18 STRONG SUSPICION OF MR. ELMORE'S RESPONSIBILITY HERE?
19 AND I THINK I HEARD THE OFFICER SAY THAT HE SEARCHED THE
20 CAR AFTER ONE GUY WAS OUT AND BEFORE HE WENT AND PULLED
21 THE OTHER ONE OUT, OKAY?

22 AND SO, I MEAN, THERE ARE SOME THINGS THAT CAN
23 -- ARE KIND OF GETTING LOST HERE. FRANKLY, YOU COULD
24 PUT IT TWO INCHES -- YOU COULD PUT IT 18 OR 12 INCHES
25 FROM YOU. THESE CASES WHERE THE STUFF IS LEFT BEHIND
26 ARE ALWAYS A PROBLEM.

27 BUT THERE IS AN INDEPENDENT WITNESS WHO SAYS,
28 "I SEE THE GUY SMOKING CRACK," OKAY? HE'S GOT STUFF IN

1 HIS BACK SIDE, WHICH, AS MR. RANDALL WILL KINDLY POINT
2 OUT, IS EVIDENCE IN AND OF ITSELF THAT HE MIGHT NOT BE
3 USING IT HIMSELF, BASED ON THE LOCATION.

4 BUT YET HE HAS STUFF ON HIM AT A TIME WHERE
5 SOMEBODY SAYS THAT HE RECENTLY USED THE STUFF. AND THEN
6 THERE IS -- THEY'RE ALL DOING IT. LET'S BE REALISTIC.

7 I THINK, YEAH, I COULD FIND PROBABLE CAUSE TO
8 BELIEVE THAT MR. ELMORE IS GUILTY OF THIS STUFF AND
9 CROWLEY IS GUILTY OF IT. OKAY. IF HE HAD ARRESTED
10 CROWLEY, THERE IS PROBABLY ENOUGH THERE FOR CROWLEY
11 BECAUSE HE HAS GOT A SMOKING PIPE. CROWLEY HAS A PIPE;
12 THIS GUY DOESN'T, RIGHT?

13 **MR. THOMPSON:** RIGHT.

14 **THE COURT:** SO -- BUT IT'S A PROBABLE CAUSE
15 STANDARD. AND SO I THINK, BASED ON THE FACTS AND
16 CIRCUMSTANCES AND THE INFERENCES THAT CAN BE MADE --
17 THIS IS UNLIKE THE JURY INSTRUCTIONS, WHICH SAY, IF YOU
18 HAVE MULTIPLE INFERENCES THAT CAN BE MADE FROM
19 SOMETHING -- HERE, A REASONABLE INFERENCE CAN BE MADE.

20 AND A REASONABLE INFERENCE CAN BE MADE. YOU
21 HAVE RECENT USE. YOU HAVE STUFF UP HIS BUTT CHEEKS.
22 AGAIN, WHAT YOU MIGHT USE IS AN ARGUMENT FOR HE IS
23 TRYING TO DISTRIBUTE IT. I DON'T KNOW IF YOU WANT TO GO
24 DOWN THAT ROAD.

25 THEN THERE IS STUFF THAT'S IN THE POSSESSION
26 OF BOTH OF THEM, OR PROBABLY IN POSSESSION OF BOTH OF
27 THEM. AND IF YOU BELIEVE THE ONE GUY, THIS GUY HAD IT.
28 THIS GUY, MR. ELMORE, POINTS HIS FINGER AT THE OTHER GUY

1 AND SAYS, "HE'S THE ONE." AND HIS RUSE TO GET OUT OF
2 THE CAR WITH THE ASTHMA WAS SO THAT HE CAN DROP THE
3 STUFF IN THERE AND POINT THE FINGER AT MR. ELMORE.

4 I UNDERSTAND THE ARGUMENT, AND IT IS REALLY
5 FOR A JURY TO DECIDE.

6 SO I WILL FIND PROBABLE CAUSE TO BELIEVE THE
7 OFFENSES CHARGED IN THE RENUMBERED COUNT 1, POSSESSION
8 OF COCAINE BASE, HEALTH AND SAFETY CODE SECTION
9 11350(A). I WILL FIND PROBABLE CAUSE TO BELIEVE THAT
10 OFFENSE HAS BEEN COMMITTED, AND THE 148.9, AND THAT MR.
11 ELMORE IS GUILTY THEREOF.

12 THEREFORE, WE WILL HOLD MR. ELMORE FOR FURTHER
13 PROCEEDINGS IN SUPERIOR COURT. WHAT ARE WE DOING, A
14 TWO-WEEK ARRAIGNMENT DATE, SINCE IT WAS A BINDOVER ON
15 SOMETHING OTHER THAN THE COMPLAINT?

16 **MR. THOMPSON:** WE CAN RENUMBER BY
17 INTERLINEATION AND DO THE ARRAIGNMENT TODAY.

18 **THE COURT:** IF YOU ARE OKAY WITH THAT.

19 **MS. KARR:** THAT'S FINE.

20 **THE COURT:** WITH COUNSEL'S APPROVAL, I WILL
21 PUT COUNT 1 IS DISMISSED, 4/29/08; MY INITIALS.
22 RENUMBER COUNT 1; RENUMBER COUNT 2. RENUMBERED WITH MY
23 INITIALS, 4/29/08. ALL RIGHT.

24 IMMEDIATE ARRAIGNMENT, THEN. MS. KARR, IF WE
25 COULD ASK YOU TO SIGN THE COMPLAINT. MR. THOMPSON, YOU
26 WILL STIPULATE THAT THE SIGNATURE OF THE COMPLAINT BY
27 THE DEPUTY DISTRICT ATTORNEY WILL MAKE IT -- STIPULATE
28 IT WILL BE DEEMED THE INFORMATION AND WAIVE TIMELY

1 RECEIPT OF THE REPORTER'S TRANSCRIPT? YES TO BOTH?

2 MR. THOMPSON: YES, YOUR HONOR.

3 THE COURT: IF YOU WOULDN'T MIND THE FORMALITY
4 OF AN ARRAIGNMENT. SHE HAS SIGNED THE COMPLAINT.

5 MR. THOMPSON: WE ARE IN RECEIPT OF THE
6 INFORMATION. I HAVE DATED THE COMPLAINT WITH TODAY'S
7 DATE. WAIVE FORMAL READING. WE WOULD ASK THE COURT TO
8 ENTER A NOT GUILTY PLEA AND DENIAL OF ALL ALLEGATIONS ON
9 HIS BEHALF.

10 THE COURT: WE WILL SHOW A NOT GUILTY PLEA IS
11 ENTERED; DENY ALLEGATIONS. WE'LL SHOW PREVIOUS
12 ACKNOWLEDGEMENT, ADVISAL, WAIVER. WE'LL SHOW
13 REPRESENTATION BY THE PUBLIC DEFENDER'S OFFICE.

14 AND WE WILL SAY THAT -- I FORGOT TO MENTION
15 THAT, ON THE PRIORS ALLEGATIONS, THE COURT IS NOT
16 REQUIRED TO MAKE ANY FINDINGS ON THOSE. LET'S DOUBLE
17 CHECK WITH THE DUE COURSE DATES.

18 MR. THOMPSON: THANK YOU.

19 THE CLERK: READINESS, JUNE 10, AND TRIAL CALL
20 IS JUNE 18TH.

21 THE COURT: HOW DO THOSE LOOK FOR YOU?

22 MR. THOMPSON: JUNE 18TH MAY BE TOUGH. I WILL
23 ADDRESS THAT AT THE READINESS CONFERENCE, THOUGH.

24 THE COURT: GOOD ENOUGH. MR. ELMORE, I KNOW
25 THEY MENTIONED PAROLE. I DIDN'T HAVE A STATUS, BUT IF
26 THEY HAVE HAVE A PAROLE HOLD, IF IT GETS LIFTED, THERE
27 IS BAIL. IF YOU MAKE BAIL, YOU STILL HAVE TO COME BACK
28 ON THOSE TWO DATES, IF THE HOLD IS LIFTED AND YOU MAKE

1 BAIL.

2 THE CLERK: READINESS CONFERENCE, JUNE 10,
3 8:30, DEPARTMENT 31. TRIAL CALL, JUNE 18, 9:00,
4 DEPARTMENT 11. MOTIONS DUE, MAY 15.

5 MR. THOMPSON: MAY -- I'M SORRY?

6 THE CLERK: 15TH.

7 MR. THOMPSON: YOUR HONOR, THERE IS ONE OTHER
8 THING. GIVEN THAT COUNT 1 IS DISMISSED, MR. ELMORE HAD
9 \$100 AND SOMETHING DOLLARS TAKEN FROM HIM, I'M SURE, AS
10 EVIDENCE. SINCE THAT COUNT IS NO LONGER IN ACTION, I
11 WOULD ASK THAT THAT MONEY BE PERMITTED TO BE RELEASED TO
12 --

13 THE COURT: PREPARE AN ORDER. ASK THE D.A. IF
14 THEY WILL SIGN IT.

15 MR. THOMPSON: ALL RIGHT.

16 THE COURT: ON SOMETHING LIKE THAT, IF THE
17 D.A. SIGNS IT, I WILL SIGN IT.

18 MR. THOMPSON: ALL RIGHT.

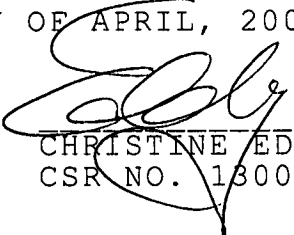
19 THE COURT: OKAY.

20 (CONCLUSION OF PROCEEDINGS.)
21
22
23
24
25
26
27
28

1 STATE OF CALIFORNIA)
2) SS.
3 COUNTY OF SAN DIEGO)
4
5
6

7 I, CHRISTINE EDDY, CSR NO. 13000, A REPORTER IN THE
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR
9 THE COUNTY OF SAN DIEGO, HEREBY CERTIFY THAT I REPORTED
10 IN MACHINE SHORTHAND THE PROCEEDINGS HAD IN THE WITHIN
11 CASE, AND THAT THE FOREGOING TRANSCRIPT, INCLUSIVE, IS
12 A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE SAID
13 PROCEEDINGS.

14 DATED THIS 29TH DAY OF APRIL, 2008

15
16 
17 CHRISTINE EDDY
18 CSR NO. 13000
19
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27
28

**CHRONOLOGICAL INDEX
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(A DIAGRAM)		

1 STEVEN J. CARROLL
Public Defender
2 County of San Diego
David Thompson
3 Deputy Public Defender
State Bar No. 203798
4 233 'A' Street, Suite 500
San Diego, California 92101
5 Telephone: (619) 338-4700

6 Attorney for Defendant
7 Morris Elmore

FILED
SAN DIEGO SUPERIOR COURT

MAY 02 2008

CLERK OF THE SUPERIOR COURT
BY C. SARNO

EXhibit (D.)

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 THE PEOPLE OF THE STATE OF

12 CALIFORNIA,

13 Plaintiff,

14 vs.

15 Morris Elmore,

16 Defendant

) Case No.: CD213010

) **MOTION FOR RELEASE OF PROPERTY**

) Date: 05/02/2008

) Time: 08:30 am

) Dept: 31

18
19 **TO: BONNIE DUMANIS, DISTRICT ATTORNEY FOR THE COUNTY OF SAN DIEGO**
20 **AND/OR HIS AUTHORIZED REPRESENTATIVE:**

21 **NOTICE IS HEREBY GIVEN** that on the above time and date, or as soon thereafter as counsel
22 may be heard, in the Superior Court of San Diego, located at 220 West Broadway, San Diego,
23 California, Defendant Morris Elmore will move the court for an order to return property.

24 This motion is based on the records and files of this case, the attached memorandum of points
25 and authorities and all other matters properly presented to the court at the hearing on this matter.

26 The items requested are specified in a PROPERTY TAG #052535 as follows:

27 \$183.00 USD

ARGUMENT

**DEFENDANT HAS A RIGHT TO HAVE THIS COURT ORDER THE
AUTHORITIES TO RETURN HIS PROPERTY WHICH IS NOT
CONTRABAND, WEAPONS OR EVIDENCE OF CRIME.**

There is no authority for the police or any other governmental agency to retain possession of property which is not contraband, stolen property or evidence. (See *People v. Superior Court (McGraw)* (1979) 100 Cal.App.3d 154, 160; Penal Code section 411 (stolen property); *Buker v. Superior Court* (1972) 25 Cal.App.3d 1085 (money).) The entire statutory scheme, Penal Code section 1407-1422, envisions the return of all property to its owner or possessor with the exception of dangerous or deadly weapons, narcotic or poison drugs, explosives or items prohibited by law. (Pen. Code § 1419.)

Absent a contrary showing, the defendant is presumed to own the property which he possessed when he was arrested and which was taken from him in Evidence Code section 673 "things which a person possesses are presumed to be owned by him". This presumption operates "until the state has produced evidence which would support a finding that [he] did not in fact own the property." (*People v. Superior Court (McGraw)*, supra, at 159.)

When the authorities take property from a criminal defendant, they do so "on behalf of the court for use in a judicial proceeding" and the officer taking the property "must respond, as does any custodian, to the orders of the court for which he acted." (*People v. Icenogle* (1985) 164 Cal.App.3d 620 at 623.)

The case of *Buker v. Superior Court* ((1972) 25 Cal.App.3d 1085) makes clear both the duty and authority of the trial court to return property. The defendants brought a nonstatutory motion for return of monies seized during the execution of a search warrant.

The Court of Appeal initially noted that trial courts have power to release property both under Penal Code section 1536 when the property is seized under a warrant, and under "the inherent power of the court to control and prevent the abuse of its process (*Id.* at 1089.)

The trial court had refused to return the property on the grounds that it might be admissible as evidence, but the appellate court found that "denial of the motion upon the ground the seized currency should be retained in custody because there was some color upon which it could be admitted into evidence constituted an abuse of discretion." (*Id.* at 1090.)

1 An earlier case, *Gershenshorn v. Superior Court* ((1964) 227 Cal.App.2d 361), specifically
 2 permits bringing a nonstatutory motion for return of property seized without a warrant (*Id.* at 365). The
 3 court also disposed of the contention that only property which had been introduced into evidence could
 4 be returned by court order:

5 But even as to property not yet offered or received in evidence we think judicial control
 6 still exists. We are not now concerned with a private seizure.... We deal with property
 7 seized by a public officer, acting under color of his status as a law enforcement officer,
 8 and seized solely on the theory that it constitutes a part of evidence on which judicial
 action against its owner... will be taken. We regard property so taken and so held as
 being as much held on behalf of the court... as is property taken and held under a warrant.
 (*Id.* at 366.)

9 The decision preceding *Gershenshorn v. Superior Court* was *People v. Gershenshorn* ((1964)
 10 225 Cal.App.2d 122). There the court clearly stated the rule regarding motions for return of property:

11 ...one whose property is illegally seized may desire... to procure its return. In that case he
 12 may, either as an alternative to, or in conjunction with, a motion to suppress, move for its
 13 return.... If the property was seized without a warrant, the courts have allowed a similar
 motion. (*Id.* at 125.)

14 In this case, Mr. Elmore was arrested and charged with possessing cocaine base for sale, simple
 15 possession of cocaine base, and giving false information to a peace officer. Prior to the start of the
 16 preliminary examination, the People moved to dismiss the possession for sales count. Mr. Elmore was
 17 bound over on the charges at preliminary examination. Within a few days, the People moved to dismiss
 18 the case in its entirety.

19 In light of this, there exists no legal rationale as to why the requested property should not be
 20 released and ordered returned.

21 Dated: May 1, 2008

Respectfully submitted,

22 STEVEN J. CARROLL
 23 Public Defender

24 By: 

25 David Thompson
 26 Deputy Public Defender

27 Attorneys for Defendant
 28 Morris Elmore

1 IT IS STIPULATED BY AND BETWEEN THE PARTIES THAT the money (\$183.00 USD) seized
2 from the defendant in this case, Morris Elmore, be returned to him.

3
4 IT IS SO STIPULATED:

5 May 1, 2008

May 2, 2008

6 

7 

8 David A. Thompson
9 Attorney for the Defendant

Kris Anton
Deputy District Attorney

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San Diego, California 92101
Telephone: (619) 338-4700

Attorney for Defendant
Morris Elmore

FILED
SAN DIEGO SUPERIOR COURT

MAY 02 2008
CLERK OF THE SUPERIOR COURT
BY C. SARNO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

THE PEOPLE OF THE STATE OF
CALIFORNIA;

Plaintiff,

vs.

Morris Elmore,

Defendant

Case No.: CD213010

ORDER TO RELEASE PROPERTY

**TO: WILLIAM LANDSDOWNE, CHIEF OF POLICE FOR SAN DIEGO POLICE
DEPARTMENT, OR HIS AUTHORIZED REPRESENTATIVE:**

YOU ARE HEREBY ORDERED to return to Morris Elmore, (d.o.b. 10/21/1964), , the
following property which was seized at the time of defendant's arrest in case 08040023407 (Court case
SCD213010), taken from the person of the defendant by Officer Minter, Badge # 6052, and
impounded on property tag TAG # 052535:

\$183.00 USD

Dated: May 2, 2008

JEFFREY F. FRASER, JUDGE

JUDGE OF THE SUPERIOR COURT



SAN DIEGO POLICE DEPARTMENT

COMPLAINT CONTROL FORM

Internal Affairs Unit
Complaint Index No. _____

IA USE ONLY

COMPLAINANT

Mr. Morris Elmore #F03648/F4#18-17Low
P. O. Box 799004
San Diego, CA 92179

SEX: _____ RACE: _____ HGT: _____ WGT: _____

HOME PHONE: _____

BUS. PHONE: _____

CITY _____ ST _____ ZIP _____

EMPLOYED? Y/N OCCUPATION _____

INTERPRETER REQUIRED ☐ LANGUAGE _____COMPLAINANT INJURED? ☐ Y/N PHOTOS TAKEN? ☐ Y/NPHOTOS TAKEN BY
NAME & ID NUMBER: _____

WITNESSES

NAME _____ DOB _____ SEX: _____ RACE: _____

HOME ADDRESS _____ HOME PHONE: _____

CITY _____ ST _____ ZIP _____ BUS. PHONE: _____

BUS. ADDRESS _____ INTERPRETER REQUIRED ☐ LANGUAGE _____

CITY _____ ST _____ ZIP _____

NAME _____ DOB _____ SEX: _____ RACE: _____

HOME ADDRESS _____ HOME PHONE: _____

CITY _____ ST _____ ZIP _____ BUS. PHONE: _____

BUS. ADDRESS _____ INTERPRETER REQUIRED ☐ LANGUAGE _____

CITY _____ ST _____ ZIP _____

WITNESS SEARCH CONDUCTED? ☐ YES ☐ NO

LIST ADDITIONAL WITNESSES ON ARJIS 3 FORM

SDPD

ID Number: 6052 Name: MINTEN Div: C Unit #: _____ID Number: 60310 Name: MASSEY Div: C Unit #: _____ID Number: 4442 Name: SALAS Div: C Unit #: _____

UNIT # ON INCIDENT DATE IF APPLIES

INCIDENT

INCIDENT LOCATION: _____

DATE: _____ TIME: _____ CAD INCIDENT NUMBER (Example: 94070056149): _____

COMPLAINT RECEIVED: IN PERSON ☐ PHONE ☐ LETTER ☒ ROUTE SLIP ☐ OTHER ☐CCF REC'D BY: ID #: 3756 NAME: Swagg DIV: 1A DATE: _____ TIME: _____COMPLAINT RESULT OF: INVEST. ☐ ARREST ☒ TRAF. CONT. ☐ RADIO CALL ☐ SERVICE REQ. ☐ OTHER ☐

INVESTIGATING DIVISION: _____ INVESTIGATING SUPERVISOR: _____

COMPLAINT SYNOPSIS

SEE ATTACHED

Keep this copy for your files.

MISC

INQUIRY ONLY ☐

C.O.'S INITIALS _____

CCF INVESTIGATION
APPROVED BY: _____

COMMANDING OFFICER

I.A. Use ONLY: I.A. Reviewed: _____

SIGNATURE & ID NUMBER

Date: _____



1) Internal Affairs Received my Complaint
June 13, 2008 / At 11:15 Am (Stamped on Complaint Form)

2) SGT. Swiskoski /

3) LT. Bragg # 3756

4) Sent copy back July 2, 2008
To Internal Affairs + O
Investigate.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

[C.C.P. §§ 446, 2015.5; 28 U.S.C. §1746]

I Maurice Knight, am a resident of the State of California and am over the age of eighteen years and am not a party to the above-entitled action. My address is listed below.

On X 8-11-08, I served the following documents:

by placing a true copy thereof enclosed in a sealed envelope with First Class postage thereon fully prepaid in the United States Mail by delivering to prison officials for processing through the Institution's internal legal mail system at San Diego California, addressed as follows::

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed in the County of San Diego, California on X 8-11-08

Maurice Knight #G21298
F4/#18-1174P

P.O. Box 799004

San Diego, CA 92179-9004

Pursuant to the holding of the United States Supreme Court in Houston v. Lack 108 S. Ct. 2379, 487 U.S. 266, 101 L.Ed.2d 245 (1988) and FRAP, Rule 4 (c) inmate legal documents are deemed filed on the date they are delivered to prison staff for processing and mailing via the Institution's internal legal mail procedures.

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. Exemptions provided for local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the filing docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Morris Larnard Elmore

Minter, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

2008 1983
FILING FEE PAID
Yes No
MOTION FILED
Yes No
COMPLAINT TO
Court Price

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

FILED
AUG 11 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Morris Larnard Elmore
PO Box 799004
San Diego, CA 92179
F-03648

ATTORNEYS (IF KNOWN)

'08 CV 1464 L PCL

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|--|---|--|
| Citizen of This State | PT <input type="checkbox"/> DEF <input type="checkbox"/> | Incorporated or Principal Place of Business in This State | PT <input type="checkbox"/> DEF <input type="checkbox"/> |
| Citizen of Another State | PT <input type="checkbox"/> DEF <input type="checkbox"/> | Incorporated and Principal Place of Business in Another State | PT <input type="checkbox"/> DEF <input type="checkbox"/> |
| Citizen or Subject of a Foreign Country | PT <input type="checkbox"/> DEF <input type="checkbox"/> | Foreign Nation | PT <input type="checkbox"/> DEF <input type="checkbox"/> |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. 1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSL (405(p)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input checked="" type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

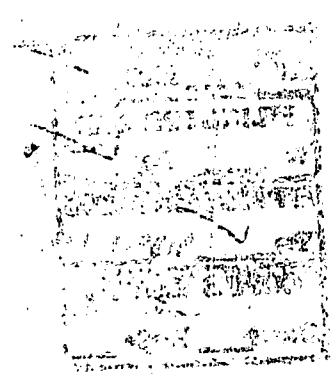
DATE 8/11/2008

SIGNATURE OF ATTORNEY OF RECORD

CR

R. Miller

THE UNITED STATES OF AMERICA
VS.
[Illegible Name]
[Illegible Address]
[Illegible City, State, Zip]
[Illegible Phone Number]
[Illegible Email Address]



U.S. DISTRICT COURT
[Illegible Name]

U.S. DISTRICT COURT
[Illegible Name]